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SALUS POPULI SUPREMA LEX ESTO

*“The welfare of the people shall be the supreme law.”*



JOHN R. ASHCROFT  
SECRETARY OF STATE

# MISSOURI REGISTER

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The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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## HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—The most recent version of the statute containing the section number and the date.

**T**he Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo 2016.

## EXECUTIVE ORDER 17-08

WHEREAS, I have been advised by the State Emergency Management Agency that severe storm systems beginning on March 6, 2017, and continuing, have caused damages associated with tornadoes, high winds, hail, heavy rains, flooding, and flash flooding impacting communities throughout the state of Missouri; and

WHEREAS, the severe weather created a condition of distress and hazard to the safety, welfare, and property of the citizens of the state of Missouri beyond the capabilities of some local jurisdictions, and other established agencies; and

WHEREAS, the State of Missouri will continue to be proactive where the health and safety of the citizens of Missouri are concerned; and

WHEREAS, the resources of the state of Missouri may be needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of Missourians; and


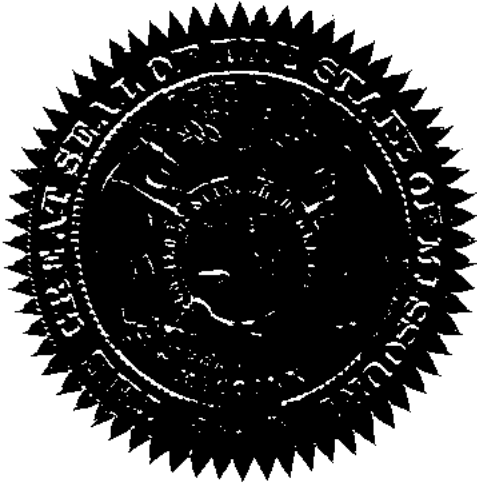
WHEREAS, an invocation of the provisions of Sections 44.100 and 44.110, RSMo., is required to ensure the protection of the safety and welfare of the citizens of Missouri.

NOW, THEREFORE, I, ERIC R. GREITENS, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and the Laws of the State of Missouri, including Sections 44.100 and 44.110, RSMo., do hereby declare that a State of Emergency exists in the State of Missouri and direct that the Missouri State Emergency Operations Plan be activated.


I further authorize the use of state agencies to provide assistance, as needed.

This order shall terminate on April 7, 2017, unless extended in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 7<sup>th</sup> day of March, 2017.



Eric R. Greitens  
Governor



John R. Ashcroft  
Secretary of State

EXECUTIVE ORDER  
17-09

WHEREAS, every child is a gift of life to support and cherish; and

WHEREAS, paid time off for new parents provides time to nurture and bond with the newest member of the family, and is linked to better infant health and development; and

WHEREAS, paid time off for new mothers increases the likelihood they will go back to work, increases their work productivity and longevity once they return, and decreases the likelihood they will need government assistance within their child's first year; and

WHEREAS, paid time off for new fathers is connected to more involvement with their children and childcare activities; and

WHEREAS, many Missouri employers offer paid parental leave to recruit and retain new parents; and

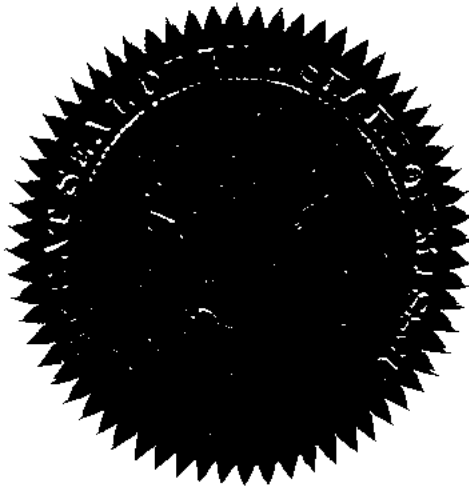
WHEREAS, state government should recruit the best and brightest individuals to serve Missourians; and

WHEREAS, paid parental leave will strengthen families and communities, which will make Missouri a better place to work and to live.

NOW THEREFORE, I, ERIC R. GREITENS, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order the following for state employees of the departments and agencies of the executive branch of Missouri state government (excepting the employees of independent commissions and other elected officials who set the policies for their offices):

1. Every parent shall receive parental leave following the birth or adoption of a child.
  - a. Every parent who is the primary caregiver shall receive six weeks of parental leave.
  - b. Every parent who is the secondary caregiver shall receive three weeks of parental leave.
  - c. If both parents are state employees, each parent shall receive parental leave, which may be taken concurrently, consecutively, or at different times.
2. Parental leave provides leave with 100 percent of regular salary.
3. Parental leave shall not be counted against annual leave or sick leave, which shall continue to accrue during the period of parental leave. Holidays shall not be counted against parental leave. Parental leave shall run concurrently with FMLA leave if the employee is eligible.
4. Parental leave is available for any birth or adoption that occurs on or after this day.

5. The Office of Administration Division of Personnel, the Personnel Advisory Board, and each state agency under the Governor's control shall take any necessary action to make their regulations, manuals, and other documents consistent with this policy.
6. Parental leave shall be taken within the 12 weeks following the birth or adoption of a child. Parental leave may not be donated or carried over to future years.
7. Parental leave is available to all state employees of the departments and agencies under the Governor's control, whether employed on a full-time basis, on an hourly basis, or in 24-hour-positions.
8. Missouri's other state elected officials, independent commissions, legislature, and judiciary are encouraged to adopt comparable policies for their employees.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 13th day of March, 2017.

A handwritten signature in black ink, appearing to read "Eric R. Greifens", written over a horizontal line.

Eric R. Greifens  
Governor

A handwritten signature in black ink, appearing to read "John R. Ashcroft", written over a horizontal line.

John R. Ashcroft  
Secretary of State



**U**nder this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

**E**ntirely new rules are printed without any special symbology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

**A**n important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment, or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

**I**f an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register*. If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

**A**n agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety- (90-) day-count necessary for the filing of the order of rulemaking.

**I**f an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:

**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

## Title 11—DEPARTMENT OF PUBLIC SAFETY Division 75—Peace Officer Standards and Training Program Chapter 13—Peace Officer Licenses

### PROPOSED AMENDMENT

**11 CSR 75-13.010 Classification of Peace Officer Licenses.** The director of public safety is amending section (1).

*PURPOSE: This amendment is being made because the Missouri State Water Patrol combined with the Missouri State Highway Patrol, so a Class A-WP peace officer license is no longer needed.*

(1) Every peace officer license shall be classified according to the type of commission for which it is valid[:].

(A) Class A. Valid for any commission, except commission with the Missouri State Highway Patrol[, the Missouri State Water Patrol,] and the Missouri Conservation Commission.

(B) Class A-HP. Valid for any commission, except commission with the *[Missouri State Water Patrol, and the]* Missouri Conservation Commission.

*[(C) Class A-WP. Valid only for commission by the Missouri State Water Patrol.]*

*[(D)](C) Class A-CC. Valid only for commission by the Missouri Conservation Commission.*

*[(E)](D) Class B. Valid for any commission, except commission by a first class county with a charter form of government, a political subdivision located within a first class county with a charter form of government, a city not within a county, the Missouri State Highway Patrol, [the Missouri State Water Patrol,] or the Missouri Conservation Commission.*

*[(F)](E) Class C. Valid only for commission within a third class county pursuant to section 590.040.1(4), RSMo and only for the particular commission held by the licensee on July 1, 2002, or a commission that the director has determined to be similar pursuant to section 590.040.2, RSMo.*

*[(G)](F) Class D. Valid only for commission as a reserve peace officer within a county having more than one (1) million inhabitants and with either a charter form of government or of the first classification pursuant to section 590.040.1(5), RSMo.*

*[(H)](G) Class R.*

1. Valid only for commission as a reserve peace officer with police powers limited by the commissioning authority as follows: while on duty the officer shall be under the direct supervision of a commissioned officer who holds a valid class A, B, or C license; while off duty the officer shall have no police power and shall not carry a concealed weapon, unless otherwise permitted by law; and the officer shall have no police power outside the commissioning political subdivision.

2. As used in this rule, "direct supervision" means supervision in which the supervising officer: monitors the supervised officer, including by two-way radio or radio scanner; is available for voice communication with the supervised officer; and is able to respond and assist the supervised officer in a timely manner.

3. A class R license shall not be valid for any commission by a first class county with a charter form of government, a political subdivision located within a first class county with a charter form of government, a city not within a county, the Missouri State Highway Patrol, *[the Missouri State Water Patrol,]* or the Missouri Conservation Commission.

*[(I)](H) Class S. Valid only pursuant to section 590.030.6, RSMo for the continuing licensure of a person holding and exercising a law enforcement commission requiring a peace officer license.*

*AUTHORITY: sections 590.020, 590.030, 590.040, and 590.190, RSMo [Supp. 2007] 2016. Original rule filed May 1, 2002, effective Oct. 30, 2002. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2017.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, Missouri Department of Public Safety Peace Officer Standards and Training (POST) Program Manager, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 75—Peace Officer Standards and Training  
Program  
Chapter 13—Peace Officer Licenses**

**PROPOSED AMENDMENT**

**11 CSR 75-13.060 Veteran Peace Officer Point Scale.** The director of public safety is amending subsection (5)(B).

*PURPOSE: This amendment is being made to award one (1) point of credit for every year of service as a full-time peace officer and to award credit to persons serving as a reserve peace officer.*

(5) The Director shall score each applicant according to the following point system.

(B) For years of experience as *[an active, full-time]* a commissioned peace officer:

- [1. At least one year, up to two years: 1 point;*
- 2. Over two years, up to three years: 2 points;*
- 3. Over three years, up to four years: 3 points;*
- 4. Over four years, up to five years: 4 points;*
- 5. Over five years, up to six years: 5 points;*
- 6. Over six years, up to seven years: 6 points;*
- 7. Over seven years, up to eight years: 7 points;*
- 8. Over eight years, up to nine years: 8 points;*
- 9. Over nine years, up to ten years: 9 points;*
- 10. Over ten years, up to sixteen years: 10 points;*
- 11. Over sixteen years: 12 points.]*
- 1. Every year of active, full-time experience: 1 point;**
- 2. Every three years of reserve, part-time experience: 1 point.**

*AUTHORITY: sections 590.030 and 590.190, RSMo [Supp. 2007] 2016. Original rule filed May 1, 2002, effective Oct. 30, 2002. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2017.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, Missouri Department of Public Safety Peace Officer Standards and Training (POST) Program Manager, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 75—Peace Officer Standards and Training  
Program  
Chapter 14—Basic Training Centers**

**PROPOSED AMENDMENT**

**11 CSR 75-14.030 Standard Basic Training Curricula and Objectives.** The director of public safety is amending subsection (2)(E) so the listed training topics match the training topics found in the proposed amendment to 11 CSR 75-15.010.

*PURPOSE: These amendments allow for additional training flexibility with the goal of covering these training topics in much greater detail. In the rule's current form, it requires the training provider to*

*very briefly touch on multiple complex training topics instead of giving a detailed and proper course of instruction, which was not the intent of the Peace Officer Standards and Training Commission.*

(2) The mandatory basic training curriculum for each license class shall—

(E) Include training in the subject areas of—

1. Officer well-being, including mental health **and/or physical health** awareness;
2. Fair and impartial policing practices, including implicit bias recognition;
3. Handling persons with mental health *[and]* or cognitive impairment issues; and
4. Tactical training *[to]*, **which must include one (1) or more of the following areas:** de-escalation techniques, crisis management, critical thinking, *[and]* or social intelligence.

*AUTHORITY: sections 590.030, 590.040, and 590.190, RSMo [Supp. 2014, and sections 590.030 and 590.190, RSMo Supp. 2013] 2016. Original rule filed May 1, 2002, effective Oct. 30, 2002. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2017.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, Missouri Department of Public Safety Peace Officer Standards and Training (POST) Program Manager, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 75—Peace Officer Standards and Training  
Program  
Chapter 15—Continuing Education**

**PROPOSED AMENDMENT**

**11 CSR 75-15.010 Continuing Education Requirement.** The director of public safety is amending subsection (10)(A) by allowing the additional option of physical health training for the officer wellbeing training topic. The director of public safety is amending subsection (10)(C) by removing the requirement that the two (2) credit hours of training on handling persons with mental health issues must also include training on handling persons with cognitive impairment issues. The director of public safety is amending subsection (10)(D) by removing the requirement that the two (2) credit hours of training on tactical training must include all of the following: de-escalation techniques, crisis management, critical thinking, and social intelligence.

*PURPOSE: These amendments allow for additional training flexibility with the goal of covering these training topics in much greater detail. In the rule's current form, it requires the training provider to very briefly touch on multiple complex training topics instead of giving a detailed and proper course of instruction, which was the intent of the Peace Officer Standards and Training Commission.*

(10) Commencing for the reporting period beginning January 1, 2017, and ending December 31, 2017, and for successive reporting periods. Every peace officer shall obtain annual CLEE training covering the

following topics, which shall fit within one (1) of the four (4) curricula areas outlined in 11 CSR 75-15.020(1):

(A) Two (2) credit hours of training on officer well-being, including mental health **and/or physical health** awareness;

(C) Two (2) credit hours of training on handling persons with mental health **and/or** cognitive impairment issues; and

(D) Two (2) credit hours of training on tactical training *[to]*, **which must include one (1) or more of the following areas:** de-escalation techniques, crisis management, critical thinking, *and/or* social intelligence. Except that, for the reporting period commencing January 1, 2017, and ending December 31, 2017, the CLEE training required in subsections (A), (B), (C), and (D) hereinabove, may be satisfied by qualifying training obtained by the peace officer in 2016 or 2017, but that such hours obtained in 2016 shall not be used to satisfy the overall twenty-four (24) hours of CLEE training required to be obtained in 2017, by the provisions of section (1) hereinabove.

*AUTHORITY: sections 590.030.5(1), 590.050, and 590.190, RSMo [Supp. 2013] 2016. Original rule filed May 1, 2002, effective Oct. 30, 2002. For intervening history, please consult the Code of State Regulations. Amended: Filed March 10, 2017.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, Missouri Department of Public Safety Peace Officer Standards and Training (POST) Program Manager, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 75—Peace Officer Standards and Training  
Program  
Chapter 15—Continuing Education**

**PROPOSED AMENDMENT**

**11 CSR 75-15.020 Minimum Standards for Continuing Education Training.** The director of public safety is amending section (2) and subsection (4)(E) so the listed training topics match the training topics found in the proposed amendment to 11 CSR 75-15.010. The director of public safety is also amending subsection (4)(G) by removing the requirement that the instructor's name must appear on the certificate of training completion and replacing it with the previous requirement that the name of the individual responsible for the general administration of the course must appear on the certificate of training completion.

*PURPOSE: This amendment changes the descriptions of the training topics to the descriptions found in the proposed amendment to 11 CSR 75-15.010. This amendment further changes the requirement that the names of all CLEE instructors must appear on the certificate of training completion and replaces it with the previous requirement that only the name of the individual responsible for the general administration of the course must appear on the certificate of training completion. This was an inadvertent change made to the rules earlier this year and has caused an undue burden on the training providers.*

(2) All CLEE training shall be designated according to curricula area. CLEE training relating to racial profiling, firearms, officer

well-being, including mental health **and/or physical health** awareness; fair and impartial policing practices, including implicit bias recognition; handling persons with mental health *and/or* cognitive impairment issues; and tactical training *[to]*, **which must include one (1) or more of the following areas:** de-escalation techniques, crisis management, **critical thinking, or social intelligence** shall also be designated as such, in addition to being designated by curricula area.

(4) Upon successful completion of the requirements of any CLEE course, the provider of the training shall report to the director the successful completion of the CLEE course by the trainee in a method to be determined by the director and shall present each trainee a certificate bearing—

(E) The number of racial profiling, firearms, officer well-being, including mental health **and/or physical health** awareness; fair and impartial policing practices, including implicit bias recognition; handling persons with mental health *and/or* cognitive impairment issues; and tactical training *[to]*, **which must include one (1) or more of the following areas:** de-escalation techniques, crisis management, **critical thinking, or social intelligence** CLEE credit hours earned, if any;

(G) The name of the individual *[instructing the course]* **responsible for general administration of the course;** and

*AUTHORITY: sections 590.030.5(1), 590.050, and 590.190, RSMo [Supp. 2013] 2016. Original rule filed May 1, 2002, effective Oct. 30, 2002. Amended: Filed July 1, 2008, effective Dec. 30, 2008. Amended: Filed Dec. 3, 2015, effective May 30, 2016. Amended: Filed March 10, 2017.*

*PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Jeremy Spratt, Missouri Department of Public Safety Peace Officer Standards and Training (POST) Program Manager, PO Box 749, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**T**his section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

**T**he agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.100, 319.105, 319.107, 319.109, 319.111, 319.114, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1133-1134). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13,

2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the amendment nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal

rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and stated in her written comments (PSTIF letter comment #6) that they oppose the requirement for tank systems to be double-walled. Ms. Eighmey also stated that there would be an increased cost, making double-walled tanks a disincentive for system replacement. Furthermore, she indicated that no data has been provided to indicate this requirement will reduce the frequency or severity of leaks. And she also stated that this requirement would be a “de facto ban on steel tanks” for a number of reasons. Her comments also indicate that “we know fiberglass tanks [sic] are being deformed...by devices on vent stacks...” Additional supporting comments were also submitted by Mr. Leone, commenter noted above.

**RESPONSE:** The requirement for double-walled tanks is a requirement in the federal rule.

In regards to the comment about increased cost for double-walled tanks, the department proposed amendment does not require implementation of this requirement until July 1, 2017. Failure to promulgate these rules will almost certainly lead to revocation of our SPA, which would mean the federal rules would be effective as written, with an implementation date for this specific requirement of April 13, 2016. As such, failure to promulgate this amendment could potentially lead to more sites becoming subject to the requirement, sites with tanks already installed. This requirement will become effective in Missouri- either under this regulation or EPA’s.

In response to Ms. Eighmey’s comments about a double-walled tank requirement being a “de facto ban on steel tanks,” it is key to note that, even though this requirement is not yet effective in Missouri, more double-walled steel tanks are being installed here than single-walled tanks (over twice as many double-walled steel tanks were installed thus far in 2016). It is also relevant to note that only about eleven percent (11%) of tanks installed in the past four (4) years were steel tanks, which demonstrates that, even with the single-walled option in place, steel tanks are not the preferred tank system.

At this time, the department has not been provided with any data that demonstrates or proves that fiberglass tanks are being deformed by vapor recovery equipment. We are aware that a vacuum is being created on all tanks. We have proof that the vacuum affects product levels, in both steel and fiberglass tanks. We understand that fiberglass is a plastic that “moves,” even with simple temperature and pressure changes in and around the tank. But the vacuum in tanks will exist whether the tanks are single-walled or double-walled.

The comment also asserted that no proof has been provided that this requirement will reduce the number or severity of leaks. As this is a federal mandate, and EPA has already promulgated this rule without contestation, this requirement will be effective with or without this proposed amendment. But in response to this specific comment, these double-walled tanks are designed so that a “leak” from a primary tank is contained by the secondary, meaning a release to the environment is prevented. In 2014, an owner/operator found liquid between the two walls of their double-walled tank. Upon removal, a hole was found in the primary wall. The product, though, was contained by the secondary wall, meaning that no release of fuel to the environment was found in association with a corrosion hole in the primary wall. This specific example is not an isolated event; each year, the department addresses leaks from portions of the UST’s primary system that do not result in releases because the leak was contained in the secondary system. Ironically, the department, EPA, and PSTIF regularly track and report on “releases” from UST systems. We do not report on “near releases,” leaks or failures that could have been releases to the environment were it not for the second wall. Furthermore, there is support in the data that proves an increased number of double-walled tanks are in use, but the number of releases from tanks has decreased substantially over the years.

**COMMENT #3:** Ms. Eighmey provided written comments, suggesting language changes and rearrangement of the proposed amendment. **RESPONSE AND EXPLANATION OF CHANGE:** In the first of these comments, Ms. Eighmey suggests that the title of section (4) is confusing and that some of the language in this rule is unnecessary. This language, including the list of requirements for previously deferred tanks, is a mirror of the format and requirements of the EPA language. Since this is not a substantive change being suggested, but a preferred reading language change, and as the current language reflects EPA’s format, no changes are being made in response to these comments, except as noted in the next paragraph.

One (1) of the comments indicated that a compliance date was missing. That missing date was an accidental omission. The compliance dates are detailed, by rule, in 10 CSR 26-2.013. As such, to ensure the correct compliance dates are reflected in this rule, the language for existing systems will be amended to include the reference to compliance dates. The department has made this change in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #4:** Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented that a plan is in place to permanently close the UST systems at this airport, but the closure might not be complete by July 1, 2019. He requested alternative language to allow extra time.

**RESPONSE AND EXPLANATION OF CHANGE:** The language Mr. Landreth provided indicated that the system must be closed by July 1, 2019, or a plan must be in place for closure. This option for “a plan” is unacceptable because it does not require follow-through on that plan or completion of the closure, under the rule language. That being said, the department is willing to build into the amendment an additional six (6) months to grant extra time, making the compliance date for closure December 31, 2019. In addition, please note that the department could potentially use “enforcement” discretion when it comes to meeting this specific deadline. If the plan is actually being enacted, work is being conducted, and it is evident that closure is moving forward, but will simply miss this specific target date by a relatively short time, the department can agree to not take any enforcement action, but continue to work with the facility to ensure continued steps towards compliance. This site has many factors that would facilitate that decision, including the size of the project, the cost of the project, and that this is a new requirement. As this project begins and continues, please keep the department updated on the status of your progress. That being said, the department has made changes in the text of the order of rulemaking to include the extension for compliance. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #5:** Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented that a definition of “permanent closure” is not found in 10 CSR 26-2.012 (the definitions rule).

**RESPONSE AND EXPLANATION OF CHANGE:** Permanent closure and what is required at permanent closure are covered in 10 CSR 26-2.060 through 10 CSR 26-2.064. As such, a reference to these closure rules will be incorporated into 10 CSR 26-2.010 to enhance clarity. The department has made changes in the text of the order of rulemaking to include the extension for compliance. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

#### 10 CSR 26-2.010 Applicability

(4) Previously deferred UST systems. Previously deferred airport hydrant fuel distribution systems, tank systems, and field constructed tanks systems must meet one (1) of the following options for compliance:

(A) Option 1. Owners and operators must document that the previously deferred UST is appropriate for continued use by providing proof of compliance with 10 CSR 26-2.020 through 10 CSR 26-2.048, in accordance with the timeframes allowed in 10 CSR 26-2.013; or

(B) Option 2. Permanent closure of the UST system no later than December 31, 2019, in accordance with 10 CSR 26-2.060 through 10 CSR 26-2.064.

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	10 CSR 26-2.010 Applicability
Type of Rulemaking	Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple



and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.010 Applicability</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (c.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the

purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105 and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.011 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1134–1135). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the amendment nor the associated April 2015 fiscal assessment were challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey provided written comments, suggesting language changes and/or deletion of the proposed amended rule. Ms. Eighmey's comment indicates that, as previously deferred tanks are not subject to this rule, and as the requirements for the previously deferred USTs are outlined in other rules, this rule is no longer needed.

**RESPONSE AND EXPLANATION OF CHANGE:** Ms. Eighmey's comments identify a problem with the language in the title of this rule. Upon EPA's changes to the list of USTs previously deferred, they amended their rules to include requirements for previously deferred tanks and a new category of UST systems listed under "Partial Exclusions" in 10 CSR 26-2.010. In following EPA's language and rule changes, the title of this rule should have been amended, just as EPA's corresponding rule title was, to indicate that this rule applies to "partially excluded" UST systems, previously known as deferred. Changing the language should alleviate the confusion the existing title creates. As such, to reflect the changes in EPA's rules and to avoid confusion, the title of this rule will be amended as noted below.

In response to this comment, the department has made the requested changes in the title of the rule in the order of rulemaking. The revised title is reprinted below as it will be published in the *Code of State Regulations*.

**10 CSR 26-2.011 Installation Requirements for Partially Excluded Underground Storage Tank Systems**

**REVISED PUBLIC COST:** The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars

*(\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.011 Installation requirements for partially excluded UST systems</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually – \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>



### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### **IV. ASSUMPTIONS**

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

## REVISED FISCAL NOTE PRIVATE COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.011 Installation requirements for partially excluded UST systems</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

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**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.100, 319.105, 319.107, 319.109, 319.111, 319.114, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.012 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1135–1138). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to

maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the amendment nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey suggested changes to definitions related to the use of "underground" with piping in her written comments (PSTIF comment #1 and 10 CSR 26-2.012 Definitions). A similar comment was submitted by Mr. Greenwalt and Mr. Landreth, commenters noted above. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The definition of "underground storage tank" or UST has not changed since 1989, which is when the Missouri Statutory definition of underground storage tank was written in 319.100(16), RSMo. While many other EPA definitions were included in the Missouri rule by reference, this specific definition was not. Instead the rule referenced the Missouri statute.

The original (circa 1986) federal definition of underground storage tank, as provided in 40 CFR 280.12, "means any one or combination of tanks (including *underground* pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground." (Emphasis added)

The original (established 1989) Missouri statutory definition of underground storage tank is "any one or combination of tanks, including pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground."

There is one (1) word different between the two (2) definitions- the word in question discussed in Ms. Eighmey's comments. As state statute supersedes state rule, and as the statutory definition was incorporated by reference into the state rule, it is clear that the definition included in this draft is, in fact, the same definition provided in 319.100 of the Revised Statutes of Missouri. In this respect we

agree with Ms. Eighmey's comments: the definition has not changed in twenty-seven (27) years. The definition has remained the same since written into statute in 1989.

Since the definition is not actually changing, Missouri's implementation is not changing. To clarify this, though, please note the following:

The department already regulates aboveground piping associated with UST systems; the PSTIF has required compliance monitoring and/or documentation for some aboveground piping. For example, if an underground tank has pressurized piping that is aboveground, so long as ten percent (10%) or more of the entire system is belowground, the department requires gross monitoring of the line. Both DNR and PSTIF regularly exempt these types of piping from being equipped with line leak detector, but specifically provide a waiver indicating that aboveground pressurized piping that is easily visible while operating could meet this requirement with simple visual detection (meaning that a person in the area would immediately notice a three (3.0) gallon per hour leak, as required by the piping release detection regulation).

DNR and the Missouri Department of Agriculture have an *informal* understanding that, as the Missouri Department of Agriculture inspects dispenser areas two (2) times and as the fire code, which they enforce, provides extensive and thorough requirements in the dispenser area, DNR does not typically conduct extensive inspections in the dispenser cabinet, above the shear valve.

That being said, though, the department regularly responds to releases from equipment above the shear valve in the dispenser area; PSTIF has claims for releases from equipment in the dispenser area. In Federal Fiscal Year 2016 alone, the department reported five (5) new releases from the dispenser areas. The PSTIF has corresponding claims associated with these five (5) releases.

As repeatedly stated herein, the department does not believe there to be any change in the definition for regulated underground storage tanks. It was previously found only in the statute, but incorporated by reference into the regulation. At this time, the proposed change is simply including the actual statutory language in the rule, so that the definitions may be found in one (1) location. We are not changing the definition, how it is interpreted, or how the department will implement the rule from current practices. A fiscal assessment is not required. This is not a change in definition, merely a change in location for clarity, at the request of the regulated community.

However, a typo was noted in the draft rule language, as it did not exactly match the statutory language. The typo is corrected with the change in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

Ms. Eighmey did note concerns with the definition of dispenser. We can understand that confusion in the language. To ensure that the new definition of dispenser is clear, though, the department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #3: Ms. Eighmey suggested changes to definitions related to the use of "underground" with piping in her written comments (PSTIF comments 10 CSR 26-2.012 Definitions). These comments are associated with Comment #2 above, and include the definition or ancillary equipment, connected piping, petroleum storage tank and tank system. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: Please see the response to comment #2 above. For the reasons noted above, the definition of underground storage tank is not changing. The definitions "ancillary equipment," "connected piping", and "UST system or tank system" are deleted as they are unnecessary and potentially redundant when the definition of underground storage tank is in statute and rule and cover an underground tank and all piping connected, including dispenser piping, remote fill lines, and other parts of the piping, such as filters, pumps and fit-

tings. Since the department is not changing the definition or implementing it differently than it has in the past, a fiscal assessment is not required.

COMMENT #4: Ms. Eighmey suggested deleting "belowground release," "underground release," and "overflow release" as they are confusing and not used. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: These definitions are EPA definitions. Considering the confusion over the definition of "underground storage tank" as noted in comment #2 above, maintaining these terms, if not directly used in regulations, does appear to be helpful in general conversation and in the application of the suspected release and release response regulations. The term "release" is regularly referred to in the regulations. The different types of "releases" being defined in this rule would appear to be beneficial. Furthermore, as they are EPA definitions which have always been incorporated by reference, this is not a change. Changing the federal language could potentially require new EPA review. As such, no change is proposed in response to this comment.

COMMENT #5: In Ms. Eighmey's written comments, she opposed the definition of "corrosion expert." Specifically, she indicated that a corrosion expert should not require the specialized cathodic protection system training and certification that a simple tester would. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While this definition seems independent of the definition of cathodic protection tester, a definition supported by Ms. Eighmey that does require appropriate training and certification by the industry experts on UST cathodic protection systems, it is actually not as independent a definition as it appears. The current use of corrosion experts is to provide re-certification of a previously upgraded, cathodically protected tank. It is important to note that these tanks had to meet the upgrade standard no later than 1998. New, cathodically protected tanks have not been installed in many years, but, per the manufacturer, require the same training and certifications to install. So the use of a corrosion expert is limited, and, as it applies to today's UST systems, is used where the corrosion expert is also in a position that s/he must test the system upon completion. If an existing system is repaired or a new system is installed, a passing test is required. Per regulations, and the current definition of tester, that tester must meet certain certification requirements. If these definitions are not consistent, and consistent with the rules under which they are currently, actually applied, then someone without the required training could advertise themselves as experts and then not actually be able to complete the final step of any assessment—the test itself showing the installation or repair is valid. It seems counterintuitive, and was not the intention of the initial certification and training requirement, to confuse or otherwise mislead an owner or operator as he is selecting his corrosion expert. In short, under the currently proposed regulations, the department envisions no situation under which a corrosion expert must not also be a tester, required to meet the training and certification requirements Ms. Eighmey supported in her comments. As such, no change is proposed in response to this comment.

COMMENT #6: Ms. Eighmey suggested deleting the "leak-tight" term from the definition of a containment sump. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: First, this is an EPA definition. Second, Ms. Eighmey indicated that the rules state how these containment sumps must be tested and maintained to be "leak-tight." She further stated, though, that it is an operating condition, not a definition. As such, the language should be changed to "designed to be leak-tight." A containment sump is a system or basin that is designed to catch a leak. If it



is not “leak-tight,” it isn’t serving its function or meeting the requirements of a “containment sump.” In other words, if it is not containing the leak, it is not a containment sump. This is not simply an operating condition. It is part of the definition. Furthermore, the regulations require containment sumps, which by their nature must contain a leak, in certain circumstances as defined in the rules. We feel this definition is appropriate and matches the new federal definition in this area. As such, no change is proposed in response to this comment.

COMMENT #7: Ms. Eighmey suggested incorporating a definition for double-walled tank. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: This comment points out an omission in the rules, specifically a key term in the new regulations. In conjunction with tank manufacturers and tank construction standards, a definition of double-walled tank was added.

The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #8: Ms. Eighmey suggested deleting “the field or” from the definition of field-constructed tank. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While we understand the root of this comment, and agree that EPA’s use of the term “field” in the definition of “field-constructed tank” may not be the best definition, removal of the term field could have potential ramifications. A non-field constructed tank is typically a tank that has a manufacturer, a manufacturing process, a factory, and/or related industry standards. A field-constructed tank is or was a tank that often did not meet such rigorous requirements. They were typically concrete-poured or steel plates sealed and erected to create a large tank. The difference is the construction method, not strictly the location. So if the concrete was poured into forms on the adjacent property and then fitted into the ground at its final location, it would still be considered “field-constructed,” even though it was actually completely made at the location where it will be used to store a regulated substance. Removing these words, then, could limit the intended application of the definition. As such, no change is proposed in response to this comment.

COMMENT #9: Ms. Eighmey indicated that it was unclear whether a UST containing a mixture or petroleum and a hazardous substance is a “petroleum storage tank” or a hazardous substance UST system. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While we also understand this comment, this ambiguity has been in place since the statutory definition was created. The flexibility, though, allows the department to treat a gasoline tank that contains an additive that may be a hazardous substance as a gasoline tank. Alternatively, there may be hazardous substance tanks that may contain a small amount of diesel, gasoline or other petroleum product, but are used and handled as hazardous substances. The determination typically considers the amount of each substance and the product’s final use. As such, no change is proposed in response to this comment.

COMMENT #10: Ms. Eighmey suggested deleting some terms from the definition that she indicated are not used in the rule, specifically “liquid trap,” “noncommercial purposes,” and “underground area.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: These terms are EPA definitions. They are not currently used in the rule, but they are currently used in the statutory definitions found in 319.100, RSMo. These definitions provide clarity, but no changes, to the statutory definitions. As such, no change is proposed in response to this comment.

COMMENT #11: Ms. Eighmey commented that the definition of “out-of-service” and “out-of-use” were in bold in the *Missouri Register* but did not note any changes to the definition. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This paragraph is in bold simply because it was moved-deleted from one area and moved to the next, because the definitions are numbered but must remain in alphabetical order. This was formally definition 2 under “O” but is now definition 4. Other than numbering, no changes were made to the content or language in the definition. As such, no change is proposed in response to this comment.

COMMENT #12: Ms. Eighmey suggested alternative language on the definition of “owner.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: As the language Ms. Eighmey suggests does not change the meaning of the definition and is more consistent with the statutory definition, the suggested language will be used.

The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #13: Ms. Eighmey suggested changes to language in the definition of “petroleum storage tank.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The definition of “petroleum storage tank” was originally changed at the suggestion of Ms. Eighmey, specifically to tie the definition only to the rules in this chapter. At the time the suggestion was made, Ms. Eighmey was concerned that using the full statutory definition could potentially tie aboveground storage tanks into this chapter, which was not the intent. Based on the suggestions within Ms. Eighmey’s current, written comments, the department will amend the language, although not exactly as suggested, because those suggestions change the definitions and may bring hazardous substance tanks into regulations that had not previously applied.

The department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #14: Ms. Eighmey commented on the definition and need for the term “replaced,” specifically as it pertains to the tank portion of the system. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While we agree and we, too, consider a new tank simply a new tank, regardless of whether they had been one previously located in the same pit, site, or location, EPA clearly defined this term to avoid ambiguity and a potential loophole to occur. As such, no change is proposed in response to this comment.

COMMENT #15: Ms. Eighmey suggested changes to language in the definition of “upgrade.” The suggestion specifically included the word “or” in the list of equipment included in “upgrade.” A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey’s comment is appreciated as the word “or” was not intentionally omitted. The department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #16: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth provided a

comment suggesting a definition of “abandonment” be added.

RESPONSE: Mr. Landreth’s definition of abandonment really appears to be a “waiver” from filling the piping portion of the UST system with an inert solid material to be considered permanently closed. He adds this term and appears to use it to ensure that a piping run, permanently closed in place under 10 CSR 26-2.060 through 10 CSR 26-2.064, is “closed” and does not require further closure activities if it is not filled with an inert solid material, but is left in place. The *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document* provides Missouri’s written interpretation that a piping can be considered permanently closed if the ends of the piping are “sealed with cement or concrete grout,” rendering them unusable. If the piping is closed in this manner after being emptied of all fuel, and as long as all applicable closure standards and subsequent investigations and required remediation activities occur, this piping would be considered permanently closed. As such, this definition would be unnecessary. And as the term “is abandoned” is used to mean something completely unrelated in the UST community, this definition would appear to be confusing. As such, no change is proposed in response to this comment.

COMMENT #17: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth provided a comment concerning the definition of “double-walled piping” indicating that airport hydrant system pipelines are not amenable to being double-walled.

RESPONSE: Mr. Landreth’s comment pertains to a definition. This definition does not require action and does not require existing airport hydrant systems to change piping. As such, no change is proposed in response to this comment.

COMMENT #18: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented that a definition of “permanent closure” is not found in 10 CSR 26-2.012 (the definitions rule).

RESPONSE AND EXPLANATION OF CHANGE: Permanent closure and what is required at permanent closure are covered in 10 CSR 26-2.060 through 10 CSR 26-2.064. As such, a reference to these closure rules will be incorporated into 10 CSR 26-2.010 to enhance clarity. The department has made changes in the text of the order of rulemaking for 10 CSR 26-2.010 in response to this comment. No change is made in the text of 10 CSR 26-2.012(1)(D) in response to this comment.

## 10 CSR 26-2.012 Definitions

(1) Many definitions relevant to this rule are set forth in the underground storage tank (UST) law in section 319.100, RSMo.

(A) Definitions beginning with the letter A.

1. “Aboveground release” means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

2. “Airport hydrant fuel distribution system” (also called airport hydrant system) means a UST system which fuels aircraft and operates under high pressure that typically terminates into one (1) or more hydrants (fill stands). The airport hydrant system begins where fuel enters one (1) or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

3. “Annual” means recurring, done, or performed every three hundred sixty-five (365) days.

4. “Annually” means at least once every three hundred sixty-five (365) days.

(C) Definitions beginning with the letter C.

1. “Cathodic protection” is a technique to prevent corrosion of

a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

2. “Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must be certified by NACE International, the Steel Tank Institute, or the International Code Council.

3. “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

4. “Compatible” means the ability of two (2) or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

5. “Consumptive use” with respect to heating oil means consumed on the premises for heating purposes, typically in the operation of heating equipment, boilers, and furnaces.

6. “Containment sump” means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area.

7. “Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified by NACE International as a CP Technologist, CP Specialist, Senior Corrosion Technologist, or for sti-P3 tanks, a Steel Tank Institute certified Cathodic Protection Inspector.

(D) Definitions beginning with the letter D.

1. “*De minimus*” means—

A. Any volume of regulated substance(s) contained in a tank with a capacity of less than one hundred ten (110) gallons; or

B. A very low concentration of regulated substances; or

C. Any volume of regulated substance(s) contained in an emergency backup tank that holds regulated substances for only a short period of time and is expeditiously emptied after use. (Comment: *De minimus* tanks include: swimming pools, permitted wastewater treatment facilities, and chlorinated, potable water storage tanks. An oil-water separator is not a *de minimus* system unless the tank has a less than one hundred ten (110) gallon capacity.)

2. “Department,” unless otherwise stated, means the Missouri Department of Natural Resources.

3. “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

4. “Dispenser” means equipment located above the surface of the ground that dispenses regulated substances from the UST system.

5. “Dispenser system” means the dispenser and the equipment necessary to connect the dispenser to the underground portions of the piping system.

6. “Double-walled piping” is a pipe within a pipe, where the outer wall and inner walls are separated, the inner pipe is completely contained within the outer pipe, except for any single wall fittings or ends, which must be open to a leak-tight containment sump, and the space between the two (2) pipes can be used to monitor the integrity of both the inner and outer pipes.

7. “Double-walled tank” means a tank within a tank, where the inner tank is contained within the outer tank to a minimum of ninety-five percent (95%) containment, and the outer wall and inner walls have an interstitial space capable of being monitored for a leak from either tank.

(O) Definitions beginning with the letter O.

1. "On the premises where stored," with respect to heating oil, means UST systems located on the same property where the stored heating oil is used.

2. "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under 10 CSR 26-2.060-10 CSR 26-2.064.

3. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank.

4. The terms "out-of-service" and "out-of-use" are equivalent and mean that the tank system has been emptied so that no more than one inch (1") of regulated substance or residue or three-tenths percent (0.3%) by weight of the total capacity of the UST system remains.

5. "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in the discharge of the regulated substance to the environment.

6. "Owner" means any person who owned an underground storage tank immediately before the discontinuation of its use if not in use on August 28, 1989, or any person who owns an underground storage tank in use on August 28, 1989, excluding persons who hold indicia of ownership primarily to protect a security interest or lienholders exempted under section 319.100(9), RSMo.

(P) Definitions beginning with the letter P.

1. "Person" means any individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, the state and its political subdivisions, or any interstate body. "Person" also includes any consortium, joint venture, commercial entity, and the government of the United States.

2. "Petroleum" means gasoline, kerosene, diesel, lubricants, and fuel oil. This definition includes motor fuels, aviation gas, jet fuels, distillate fuel oils, residual fuel oils, and petroleum solvents.

3. "Petroleum storage tank," as it pertains to the authority in this chapter, means an underground storage tank system used to contain an accumulation of petroleum.

4. "Pipe or piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

5. "Pipeline facilities" (including gathering lines) are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(U) Definitions beginning with the letter U.

1. "Under-dispenser containment" or "UDC" means a containment sump underneath a dispenser system designed to prevent dispenser system leaks from reaching soil or groundwater.

2. "Underground area" means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

3. "Underground release" means any belowground release.

4. "Underground storage tank" is defined in section 319.100, RSMo and means any one (1) or combination of tanks, including pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground, except as exempted in section 319.100(16), RSMo.

5. "Upgrade," means the addition or retrofit of some systems, such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of regulated substance.

*ally plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annu-*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.012 Definitions</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned \$195,624 annually</p>
<ul style="list-style-type: none"> <li>▪ Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>▪ Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.012 Definitions</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>



### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.100, 319.103, 319.105, 319.107, 319.109, 319.111, 319.114, 319.117, 319.120, 319.123, and 319.137, RSMo 2016, the commission hereby adopts a rule as follows:

10 CSR 26-2.013 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1138–1139). No changes were made to the text of this proposed rule, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed new rule becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this rule are described below, as well as any change made to the text of the proposed rule in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed rules, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain

SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address

concerns prior to actual implementation. As such, no changes were made in response to this comment.

**COMMENT #3:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is *not* new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

**COMMENT #4:** Ms. Eighmey testified and stated in her written comments (PSTIF letter comment #6) that they oppose the requirement for tank systems to be double-walled. Ms. Eighmey also stated that there would be an increased cost, making double-walled tanks a disincentive for system replacement. Furthermore, she indicated that no data has been provided to indicate this requirement will reduce the frequency or severity of leaks. And she also stated that this requirement would be a "de facto ban on steel tanks" for a number of reasons. Her comments also indicate that "we know fiberglass tanks [*sic*] are being deformed...by devices on vent stacks..." Additional supporting comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The requirement for double-walled tanks is a requirement in the federal rule.

In regards to the comment about increased cost for double-walled tanks, the department proposed rule does not require implementation of this requirement until July 1, 2017. Failure to promulgate these rules will almost certainly lead to revocation of our SPA, which would mean the federal rules would be effective as written, with an implementation date for this specific requirement of April 13, 2016. As such, failure to promulgate this rule could potentially lead to more sites becoming subject to the requirement, sites with tanks already installed. This requirement will become effective in Missouri- either under this regulation or EPA's.

In response to Ms. Eighmey's comments about a double-walled tank requirement being a "de facto ban on steel tanks," it is key to note that, even though this requirement is not yet effective in Missouri, more double-walled steel tanks are being installed here than single-walled tanks (over twice as many double-walled steel tanks were installed thus far in 2016). It is also relevant to note that only about eleven percent (11%) of tanks installed in the past four (4) years were steel tanks, which demonstrates that, even with the single-walled option in place, steel tanks are not the preferred tank system.

At this time, the department has not been provided with any data that demonstrates or proves that fiberglass tanks are being deformed by vapor recovery equipment. We are aware that a vacuum is being created on all tanks. We have proof that the vacuum affects product levels, in both steel and fiberglass tanks. We understand that fiberglass is a plastic that "moves," even with simple temperature and pressure changes in and around the tank. But the vacuum in tanks will exist whether the tanks are single-walled or double-walled.

The comment also asserted that no proof has been provided that this requirement will reduce the number or severity of leaks. As this is a federal mandate, and EPA has already promulgated this rule without contestation, this requirement will be effective with or without this proposed rule. But in response to this specific comment, these double-walled tanks are designed so that a "leak" from a primary tank is contained by the secondary, meaning a release to the environment is prevented. In 2014, an owner/operator found liquid between the two walls of their double-walled tank. Upon removal, a hole was found in the primary wall. The product, though, was contained by the secondary wall, meaning that no release of fuel to the environment was found in association with a corrosion hole in the primary wall. This specific example is not an isolated event; each year, the department addresses leaks from portions of the UST's primary system that do not result in releases because the leak was contained in the secondary system. Ironically, the department, EPA, and PSTIF regularly track and report on "releases" from UST systems. We do not report on "near releases," leaks or failures that could have been releases to the environment were it not for the second wall. Furthermore, there is support in the data that proves an increased number of double-walled tanks are in use, but the number of releases from tanks has decreased substantially over the years.

**COMMENT #5:** Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented a special exclusion should be created in 10 CSR 26-2.013(2)(B) for airport hydrant fuel distribution systems.

**RESPONSE:** The rule that Mr. Landreth provided comments on is a rule specifically designed for airport hydrant fuel distribution systems and field-constructed tank systems. This language, which is from the new federal UST rules, was specifically designed for and applies to airport hydrant fuel distribution systems. The department cannot create language less stringent than the federal requirements in this area. That being said, the department is willing to build into 10 CSR 26-2.010 an additional six (6) months to grant extra time, making the compliance date for closure December 31, 2016. The department has made changes in the text of the Order of Rulemaking for 10 CSR 26-2.010 and no change is proposed in *this* rule in response to this comment.

**COMMENT #6:** Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented a special exclusion should be created in 10 CSR 26-2.013(5) for airport hydrant fuel distribution systems.

**RESPONSE:** The rule that Mr. Landreth provided comments on is a rule specifically designed for airport hydrant fuel distribution systems and field-constructed tank systems. This language, which is from the new federal UST rules, specifically mentions airport hydrant pits and

airport hydrant piping vaults. As such, it is clear that these federal requirements were designed for and apply to airport hydrant fuel distribution systems. The department cannot create language less stringent than the federal requirements in this area. As such, no change is proposed in response to this comment.

COMMENT #7: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth commented on 10 CSR 26-2.013 (applicability of closure requirements to previously closed tanks) that the closure requirements in 10 CSR 26-2.060 through 10 CSR 26-2.064 cannot be met at an airport without significant disruption.

RESPONSE: The department is unclear about which specific part of the closure rules Mr. Landreth is including in his statement. He provided another comment on another rule that indicated they would like the option to not completely fill in place all piping that is being permanently closed. His comment seemed to be requesting confirmation that a piping run, permanently closed in place under 10 CSR 26-2.060 through 10 CSR 26-2.064, is “closed” and does not require further closure activities if it is not filled with an inert solid material, but is left in place. The *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document* provides Missouri’s written interpretation that a piping can be considered permanently closed if the ends of the piping are “sealed with cement or concrete grout,” rendering them unusable. If the piping is closed in this manner after being emptied of all fuel and cleaned, and as long as all applicable closure standards and subsequent investigations and required remediation activities occur, this piping would be considered permanently closed. If this comment on applicability of closure requirements to previously closed tanks is in reference to this issue, the current practices and documents in place in Missouri appear to address this issue. As such, no change is proposed in response to this comment.

#### **10 CSR 26-2.013 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems**

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri’s rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri’s rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.013 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems</i>
Type of Rulemaking	<i>New Rule</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note.

EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost



calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

**REVISED FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.013 UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems</i>
Type of Rulemaking	<i>New Rule</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

## II. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

## III. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under section 319.105, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.019 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1139-1146). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not

consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of \$715 per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey testified and stated in her written comments (PSTIF letter comment #6) that they oppose the requirement for tank systems to be double-walled. Ms. Eighmey also stated that there would be an increased cost, making double-walled tanks a disincentive for system replacement. Furthermore, she indicated that no data has been provided to indicate this requirement will reduce the frequency or severity of leaks. And she also stated that this requirement would be a "de facto ban on steel tanks" for a number of reasons. Her comments also indicate that "we know fiberglass tanks [*sic*] are being deformed...by devices on vent stacks..." Additional supporting comments were also submitted by Mr. Leone, commenter noted above.

RESPONSE: The requirement for double-walled tanks is a requirement in the federal rule.

In regards to the comment about increased cost for double-walled tanks, the department proposed rule does not require implementation of this requirement until July 1, 2017. Failure to promulgate these rules will almost certainly lead to revocation of our SPA, which would mean the federal rules would be effective as written, with an implementation date for this specific requirement of April 13, 2016. As such, failure to promulgate this rule could potentially lead to more sites becoming subject to the requirement, sites with tanks already installed. This requirement will become effective in Missouri- either under this regulation or EPA's.

In response to Ms. Eighmey's comments about a double-walled tank requirement being a "de facto ban on steel tanks," it is key to note that, even though this requirement is not yet effective in

Missouri, more double-walled steel tanks are being installed here than single-walled tanks (over twice as many double-walled steel tanks were installed thus far in 2016). It is also relevant to note that only about 11 % of tanks installed in the past 4 years were steel tanks, which demonstrates that, even with the single-walled option in place, steel tanks are not the preferred tank system.

At this time, the department has not been provided with any data that demonstrates or proves that fiberglass tanks are being deformed by vapor recovery equipment. We are aware that a vacuum is being created on all tanks. We have proof that the vacuum affects product levels, in both steel and fiberglass tanks. We understand that fiberglass is a plastic that "moves," even with simple temperature and pressure changes in and around the tank. But the vacuum in tanks will exist whether the tanks are single-walled or double-walled.

The comment also asserted that no proof has been provided that this requirement will reduce the number or severity of leaks. As this is a federal mandate, and EPA has already promulgated this rule without contestation, this requirement will be effective with or without this proposed rule. But in response to this specific comment, these double-walled tanks are designed so that a "leak" from a primary tank is contained by the secondary, meaning a release to the environment is prevented. In 2014, an owner/operator found liquid between the two walls of their double-walled tank. Upon removal, a hole was found in the primary wall. The product, though, was contained by the secondary wall, meaning that no release of fuel to the environment was found in association with a corrosion hole in the primary wall. This specific example is not an isolated event; each year, the department addresses leaks from portions of the UST's primary system that do not result in releases because the leak was contained in the secondary system. Ironically, the department, EPA, and PSTIF regularly track and report on "releases" from UST systems. We do not report on "near releases," leaks or failures that could have been releases to the environment were it not for the second wall. Furthermore, there is support in the data that proves an increased number of double-walled tanks are in use, but the number of releases from tanks has decreased substantially over the years.

COMMENT #5: In her verbal testimony and written comments, Ms. Eighmey opposed the proposed, state-specific proposal that would require installers to provide notification prior to installing new piping systems. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey noted that this is not required under the new federal regulations, which is correct. With the new federal regulations, though, the requirements that apply to these new or replaced piping systems are more stringent. If the department is present during the installation, we can address any concerns or necessary changes prior to the piping system being buried and covered. If an installer fails to provide notification, the department could potentially require changes that would necessitate removal of concrete, shutting down an operating site, and/or more work to the piping, all of which would have been much easier had they been noted at installation rather than after completion. That being said, most installers, owners, and operators already realize the benefit of the installation inspection and provide a courtesy notification. While the department notes the potential problems with not providing notification, we are willing to allow installers and their clients to make that choice, so long as they understand the risks associated with not providing the courtesy notification. Fixing a problem after completion of installation is typically more costly and more complicated.

With that information on record, the department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*. The fiscal note has been amended.

## 10 CSR 26-2.019 New Installation Requirements

(1) Any installer who intends to install an underground storage tank

(UST) system for storage of a regulated substance must, at least fourteen (14) days before installing the tank, notify the department by approved form transmitted via email of intent to install a UST, except that this fourteen (14) day notice requirement may be waived by the department when a release is suspected or in other similarly urgent circumstances. The notification must provide the tank owner's name, installer name, the name and location of the facility where the UST will be installed, the date that the installation is expected to commence, the date that the tank is expected to be brought in use, UST system information, including tank material, size, manufacturer, piping material, piping type, and manufacturer, release detection equipment, and spill and overfill equipment. The installation notice is valid for one hundred eighty (180) days from receipt by the department and only for the UST system(s) listed on the notice. If installation does not commence within one hundred eighty (180) days of the date on which the department received the notice, a new installation notice must be submitted prior to commencing installation activities.

*REVISED PUBLIC COST: In response to comments received, the department withdrew the proposed language requiring notification of piping replacement or installation. As such, the fiscal note was revised to remove the costs associated with this state-specific amendment; the cost for the public sector to comply with the proposed state-specific requirements is six hundred dollars (\$600) annually for this rule. Additionally, the changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: In response to comments received, the department withdrew the proposed language requiring notification of piping replacement or installation. As such, the fiscal note was revised to remove the costs associated with this state-specific amendment. As such, the fiscal note was revised to remove the costs associated with this state-specific amendment; the cost for the private sector to comply with the proposed state-specific requirements is twenty-nine thousand four hundred dollars (\$29,400) annually for this rule. Additionally, the changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE

## PUBLIC COST

## I. RULE NUMBER

Rule Number and Name	10 CSR 26-2.019 New Installation Requirements
Type of Rulemaking	Amendment

## II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>Anticipate less than 15 tanks each year that will need to be tied down that would not have otherwise been tied down</p> <p><i>Specific for this rule</i></p> <p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p> <p><i>Covers 25 rules</i></p>	<p>\$2,000 per tank for a total of \$30,000 annually</p> <p>Combined annual rule total less than \$30,000 x 2% privately owned = <b>\$600 annually</b></p> <p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = <b>\$195,624 annually</b></p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	<p>The Department of Natural Resources staff review compliance documents for these UST facilities</p> <p><i>Covers 25 rules</i></p>	<p><b>Estimated \$1,621.44</b> annually additional costs associated with the new federal regulations</p>
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance</li> </ul>	<p>PSTIF also reviews compliance documents for</p>	<p><b>Estimated \$18,504.90</b> annually</p>



Fund (PSTIF)	these UST facilities	+ \$102,000 one-time for costs associated with implementing the new federal regulations
	<i>Covers 25 rules</i>	
	<b>Total annual public cost:</b>	<b>\$216,350.34 annually</b> + <b>\$102,000 one-time cost</b>

### III. WORKSHEET

For the calculations on the cost of the state proposed changes in this rule, specifically the requirement to tie-down new UST systems at installation, please see the calculations below in Section IV.

Additionally, in this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note.

EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the UST's prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

The department is withdrawing the proposal to require installation notifications for piping installations. The rest of the proposed amendments to this rule remain unchanged.

A proposed change is to require new marinas to comply with the Petroleum Equipment Institute's Recommended Practice 1000-2009, Recommended Practices for the Installation of Marina Fueling Systems. These tanks are in environmentally sensitive areas, where a leak would impact water ecosystems almost immediately. In addition, these systems are uniquely configured, with the tanks typically above the dispensers, which could allow the tank to be siphoned by the dispensers. These configurations can lead to significant leaks in environmentally sensitive areas. The department has been recommending the use of this guidance document since its publication in 2009. The Missouri Department of Agriculture has been requiring compliance with almost all, if not all of its significant pieces as well. The department is not aware of any marina UST installations that have not complied with this guidance document in the last four years. As such, we do not believe that compliance with this proposed change has a new cost associated with it, but do believe it will ensure clear requirements and environmental protection in the future.

The department is also adding an option for post-installation tightness testing. Currently the regulations only provide one option for testing the tank after installation, a tank tightness test. The proposed regulation will add a second option, testing the tank using the automatic tank gauge with the tank 95% full. As this is a new, second option, it does not add a cost, but instead lowers the cost by creating a new, potentially less costly option for compliance.

The final proposed change in this regulation is to require all new tanks be tied down. In the last three years, we have typically seen less than 10% of the tanks that are not tied down at install. With an average of 155 new tanks installed each year, that means that typically 15 tanks are not tied down. These tanks can float, leak product, cause damage to the site, hinder property sales, cause safety issues, and be a general nuisance. Based on information from installation contractors, the cost of a contractor-manufactured tie-down system is approximately \$2,000. Please note, though, that the costs to address tanks that float are much higher than \$2,000 per tank. They must be removed and leaks addressed. In addition, a tank that has floated can pose a significant safety hazard: it juts out of the ground; they can be difficult to see; they may cause vehicular damage; there are often open holes associated with them.

Of the 386 tanks installed since January 1, 2014, 9 of them (or approximately 2%) were publically/government owned. The remaining 98% were privately owned. For the purposes of this fiscal note, we will use these percentages for the calculations of public and private shares of the costs to the underground storage tank owners for only the state proposed changes within this installation rule. Please note, the percentage of active sites that are privately and publically owned is different.

The following assumptions were used in calculating the cost of implementing all of the federal rule package requirements, which includes 25 amended and added rules in this state rule package:

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

I. RULE NUMBER

Rule Number and Name	10 CSR 26-2.019 New Installation Requirements
Type of Rulemaking	Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garages/ Service Centers</li> <li>Government facilities: fuel dispensing, generator fuel storage</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures (e.g. cellular phone companies)</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners and operators of underground storage tank systems</li> </ul>	<p>Anticipate less than 15 tanks each year that will need to be tied down that would not have otherwise been tied down</p> <p><i>Specific for this rule</i></p> <p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p> <p><i>Covers 25 rules</i></p>	<p>\$2,000 per tank for a total of \$30,000 annually</p> <p>—</p> <p>Combined annual rule total less than \$30,000 x 98% privately owned == <b>\$29,400 annually</b></p> <p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned – <b>\$2,249,676 annually</b></p>
<b>TOTAL ANNUAL COST:</b>		<b>\$2,279,076 annually</b>

### III. WORKSHEET

See calculations in Section IV below for the rule-specific changes, specifically the cost to tie-down underground storage tanks (UST) at installation.

Additionally, in this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

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configured, with the tanks typically above the dispensers, which could allow the tank to be siphoned by the dispensers. These configurations can lead to significant leaks in environmentally sensitive areas. The department has been recommending the use of this guidance document since its publication in 2009. The Missouri Department of Agriculture has been requiring compliance with almost all, if not all of its significant pieces as well. The department is not aware of any marina UST installations that have not complied with this guidance document in the last four years. As such, we do not believe that compliance with this proposed change has a new cost associated with it, but do believe it will ensure clear requirements and environmental protection in the future.

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purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.



**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1147-1150). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of \$715 per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were

made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is *not* new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on a broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey testified and stated in her written comments (PSTIF letter comment #6) that they oppose the requirement for tank systems to be double-walled. Ms. Eighmey also stated that there would be an increased cost, making double-walled tanks a disincentive for system replacement. Furthermore, she indicated that no data has been provided to indicate this requirement will reduce the frequency or severity of leaks. And she also stated that this requirement would be a "de facto ban on steel tanks" for a number of reasons. Her comments also indicate that "we know fiberglass *tanks* [*sic*] are being deformed...by devices on vent stacks..." Additional supporting comments were also submitted by Mr. Leone, commenter noted above.

RESPONSE: The requirement for double-walled tanks is a requirement in the federal rule.

In regards to the comment about increased cost for double-walled tanks, the department proposed rule does not require implementation of this requirement until July 1, 2017. Failure to promulgate these rules will almost certainly lead to revocation of our SPA, which would mean the federal rules would be effective as written, with an implementation date for this specific requirement of April 13, 2016. As such, failure to promulgate this rule could potentially lead to more sites becoming subject to the requirement, sites with tanks already installed. This requirement will become effective in Missouri- either under this regulation or EPA's.

In response to Ms. Eighmey's comments about a double-walled

tank requirement being a "de facto ban on steel tanks," it is key to note that, even though this requirement is not yet effective in Missouri, more double-walled steel tanks are being installed here than single-walled tanks (over twice as many double-walled steel tanks were installed thus far in 2016). It is also relevant to note that only about eleven percent (11%) of tanks installed in the past four (4) years were steel tanks, which demonstrates that, even with the single-walled option in place, steel tanks are not the preferred tank system.

At this time, the department has not been provided with any data that demonstrates or proves that fiberglass tanks are being deformed by vapor recovery equipment. We are aware that a vacuum is being created on all tanks. We have proof that the vacuum affects product levels, in both steel and fiberglass tanks. We understand that fiberglass is a plastic that "moves," even with simple temperature and pressure changes in and around the tank. But the vacuum in tanks will exist whether the tanks are single-walled or double-walled.

The comment also asserted that no proof has been provided that this requirement will reduce the number or severity of leaks. As this is a federal mandate, and EPA has already promulgated this rule without contestation, this requirement will be effective with or without this proposed rule. But in response to this specific comment, these double-walled tanks are designed so that a "leak" from a primary tank is contained by the secondary, meaning a release to the environment is prevented. In 2014, an owner/operator found liquid between the two walls of their double-walled tank. Upon removal, a hole was found in the primary wall. The product, though, was contained by the secondary wall, meaning that no release of fuel to the environment was found in association with a corrosion hole in the primary wall. This specific example is not an isolated event; each year, the department addresses leaks from portions of the UST's primary system that do not result in releases because the leak was contained in the secondary system. Ironically, the department, EPA, and PSTIF regularly track and report on "releases" from UST systems. We do not report on "near releases," leaks or failures that could have been releases to the environment were it not for the second wall. Furthermore, there is support in the data that proves an increased number of double-walled tanks are in use, but the number of releases from tanks has decreased substantially over the years.

COMMENT #5: In her written comments, Ms. Eighmey suggested deleting the definition of double-walled tank here and creating one (1) in the definitions rule. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #6: Ms. Eighmey commented on the use of the word "replaced," specifically as it pertains to the tank portion of the system. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: While we agree and we, too, consider a new tank simply a new tank, regardless of whether there had been one (1) previously located in the same pit, site, or location, EPA clearly defined this term to avoid ambiguity and a potential loophole to occur. So while we all agree on Missouri's intent, and while we all currently agree on what is a "new" tank, we will leave the EPA language in as drafted, to ensure there are no questions, loopholes, or ambiguity for future readers. As such, no change is proposed in response to this comment.

COMMENT #7: Ms. Eighmey commented on the double-walled piping language, indicating that it was found in two (2) different places in the rule. In addition, in a separate comment, Ms. Eighmey also noted that the Missouri regulation uses "within any twelve (12)

month period” and suggested deleting this language. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** Yes, there are two (2) places that discuss double-walled piping. The first place is in subsection (1)(B). This specific language outlines *when* the requirement is effective for new and replaced piping. It references paragraph (1)(B)5. of the subsection, which describes the *what* and *how* of the requirement- what the piping must include and how it must all be installed. These are two (2) separate pieces that are not contradictory, but are necessary to clarify the when, what, and how of the double-walled piping requirements.

Ms. Eighmey is correct that the “within any twelve (12) month period” is not in the federal language. The way the federal language is written, if fifty percent (50%) or more of the piping is replaced *ever*, then the entire run must be secondarily contained. Therefore, under the federal requirements if thirty percent (30%) of the piping is replaced and then a different twenty-five percent (25%) of the piping is replaced three (3) years later, that final twenty-five percent (25%) being replaced would trigger the requirement for all of the piping to be replaced. The federal language has open-ended timeframes that could apply over years and years of piping work. The department, owners, operators, and contractors would have to track the exact amount of piping repairs each and every time, for the entire operational life of the system, and then potentially be subject to a large, and costly, full replacement at the moment the replacement, over its operational life since the rule became effective, exceeds fifty percent (50%). The department’s language limits the timespan, reduces tracking, and reduces the number of scenarios that would require full piping replacement (and becoming subject to all of the other secondary containment requirements, like sump testing and monitoring as well). As such, no change is proposed in response to these comments.

**COMMENT #8:** In her written comments, Ms. Eighmey suggested deleting the word “system” from piping systems related to piping replacement. She noted that “piping systems” is not defined. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The suggested change is accepted. The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #9:** Ms. Eighmey commented on the dispenser replacement language, specifically the addition of the word “replaced” as it pertains to equipment installation under the dispenser. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter, noted above.

**RESPONSE:** As noted in response to a previous comment, EPA specifically referenced new or replaced equipment, as it pertains to piping and tank installations, to ensure clarity and avoiding a loophole being created. In this section, the department added the words “or replaced” to ensure consistency with all of the other equipment installation and replacement language, as well to ensure clarity and avoid a potential loophole, satisfying the intent of the federal requirements. Furthermore, this language is different from the federal language, specifically to limit its application (limit the scenarios in which a containment sump is required.) This language was approved by EPA, but they noted it was different from the federal language. The owners/operators requested amended language in this section. Should we opt to change the language at this juncture, we would need to confirm EPA still approves the language. As such, leaving it as is ensures clarity, consistency with the other equipment language, as well as prevents “re-evaluation” of that language by EPA. As such, no change is proposed in response to this comment.

**COMMENT #10:** In her written comments, Ms. Eighmey suggested replacing the “and” with an “or” in the testing and monitoring component of the dispenser replacement language, found in 10 CSR 26-

2.020(1)(E)2. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** All of the relevant rules were reviewed in response to this comment, specifically 10 CSR 26-2.020(1)(E), 10 CSR 26-2.035 (containment sump testing rule), and 10 CSR 26-2.036 (walkthrough inspections rule). Please note, the language did not mirror EPA’s exactly because the language in the relevant rules does not mirror EPA’s language. To comply with the EPA rules, a new containment sump required under this rule must comply with the annual walkthrough requirement, which includes required documentation, or comply with the containment sump test requirements. Therefore testing or monitoring is required under the EPA regulations. This comment points out the originally proposed language is too vague. To make the rule more consistent with the federal language and still satisfy the three (3) relevant rules, the department will amend the text in the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #11:** Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth’s comment appears to be a request for confirmation that these new system requirements do not apply to existing systems and do not require equipment replacement.

**RESPONSE:** The secondary containment requirements, which include requirements for double-walled tanks, double-walled piping, containment sumps, and/or interstitial monitoring, are only effective when a new UST system, tank or piping is installed or when a tank, piping system, and/or dispenser are replaced. As long as all UST equipment remains in place and is functioning properly, these rules do not require upgrading existing equipment to meet the secondary containment standards. As such, no change is proposed in response to this comment.

#### **10 CSR 26-2.020 Performance Standards for New Underground Storage Tank Systems**

(1) In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the underground storage tank (UST) system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements:

(A) Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains a regulated substance must be protected from corrosion, in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory as specified in paragraphs 1. through 5. of this subsection. In addition, all new or replaced tanks where installation began on or after July 1, 2017, must be double-walled in accordance with paragraph 5. of this subsection—

1. The tank is constructed of fiberglass-reinforced plastic and complies with—

A. Underwriters’ Laboratories Standard 1316, *Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohol and Alcohol-Gasoline Mixtures*, revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters’ Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, [www.ul.com](http://www.ul.com); or

B. Other standards or publications approved by the department; or

2. The tank is constructed of steel and cathodically protected in the following manner:

A. The tank is coated with a suitable dielectric material;

B. Field-installed cathodic protection systems are designed by a corrosion expert;

C. Impressed current systems are designed to allow determination of current operating status as required in 10 CSR 26-2.031(1)(C);

D. Cathodic protection systems are operated and maintained in accordance with 10 CSR 26-2.031 or according to guidelines established by the department; and

E. The following codes and standards may be used to comply with paragraph (1)(A)2. of this rule:

(I) Steel Tank Institute *Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks*, revised 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, [www.steeltank.com](http://www.steeltank.com);

(II) Steel Tank Institute Standard F841, *Standard for Dual Wall Underground Steel Storage Tanks*, revised 2006. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, [www.steeltank.com](http://www.steeltank.com);

(III) Underwriters' Laboratories Standard 1746, *Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, [www.ul.com](http://www.ul.com);

(IV) NACE International RP 0285-2002, *Corrosion Control of Underground Storage Tank Systems by Cathodic Protection*, revised 2002. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact NACE International, Box 218340, Houston, TX 77218-8340, (713) 492-0535, [www.nace.org](http://www.nace.org);

(V) Underwriters' Laboratories Standard 58, *Standard for Steel Underground Tanks for Flammable and Combustible Liquids*, revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, [www.ul.com](http://www.ul.com);

3. The tank is a composite tank with a steel inner tank and a non-metallic external thick film coating or the tank is a steel inner tank constructed with a non-metallic external jacket forming a secondary wall. Either of these tanks shall comply with one (1) of the following industry codes:

A. Underwriters' Laboratories Standard 1746, *Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks*, revised 2007. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, [www.ul.com](http://www.ul.com);

B. Steel Tank Institute's ACT-100, *Specification for External Corrosion Protection of FRP Composite Steel USTs (F894)*, revised June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, [www.steeltank.com](http://www.steeltank.com);

C. Underwriters' Laboratories Standard 58, *Standard for Safety for Steel Underground Storage Tanks for Flammable and Combustible Liquids*, revised 1998. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, [www.ul.com](http://www.ul.com);

D. Steel Tank Institute's ACT-100-U, *Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks*, F961, June 2010. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047, (708) 438-8265, [www.steeltank.com](http://www.steeltank.com); or

E. Steel Tank Institute's Specification F922, *Steel Tank Institute Specification for Permatank*, revised 2013. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Steel Tank Institute, 944

Donata Court, Lake Zurich, IL 60047, (708) 438-8265, [www.steeltank.com](http://www.steeltank.com); or

4. The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (1)(A)1.-3. of this rule;

5. Tanks installed on or after July 1, 2017, must be double-walled.

(D) For new or replaced tanks or piping installed after July 1, 2017, containment sumps must be installed at each tank top suction piping or submersible turbine pump connection, each piping transition, ball valve or single-walled fitting location, and under each dispenser. The containment sump must be liquid-tight on its sides, bottom, and at any penetrations, with interstitial monitoring in accordance with 10 CSR 26-2.043(1)(H) and sump testing in accordance with 10 CSR 26-2.035;

(E) Dispenser Systems. Any new dispenser system installed after July 1, 2017, must have a containment sump beneath it.

1. A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed or replaced at a UST facility. The equipment necessary to connect the dispenser to the UST system includes check valves, shear valves, unburied risers and flexible connectors, and other transitional components that are underneath the dispenser and connect the dispenser to the underground UST system piping.

2. Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations and must comply with the annual walkthrough inspection requirements in 10 CSR 26-2.036 or be tested or monitored for leaks from the dispenser system in accordance with 10 CSR 26-2.035.

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.020 Performance Standards for New Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### **IV. ASSUMPTIONS**

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.



REVISED FISCAL NOTE  
PRIVATE COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.020 Performance Standards for New Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.021 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1150–1158). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of \$715 per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this Order of Rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were

made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey provided comments, both written and in her verbal testimony, opposing a specific component of the interior lining portion of this rule, specifically the requirement to retain more detailed test reports. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: EPA's new regulations include changes to this interior lining regulation, specifically that any lined tank where the lining cannot simply be patch-repaired must be permanently closed. Missouri UST owners and operators repeatedly expressed their desire to be able to prove that the lined tank was still appropriate for use, even if a complete, new lining is installed. They requested a variance from the EPA requirements. The department discussed with EPA over the course of months options for this specific language. The only way the department is allowed to be different from the EPA, according to the SPA rules for this specific section, is for the department to convince EPA that the Missouri rule will be at least as protective of human health and the environment as the EPA language. That convincing was no small feat on this specific topic. On the contrary, development of "acceptable" language and provisions was a long, thorough process, resulting in the language proposed within this rule. The EPA representatives, though, specifically indicated that the entire interior lining "language package" was the bare minimum that they would accept. That "language package" was required to specifically include better and more thorough documentation of the interior lining inspection. Based on historic and recent conversations with

EPA staff, if this requirement for more thorough and better documentation is removed from the interior lining rule language, EPA will likely not accept the language as meeting the SPA requirement. Which means the federal language would be the only other option. The federal language would eventually become the state requirement. Missouri owners and operators would lose the options that the department worked diligently to create, at their request.

As such, the department sees two viable options: 1) the currently proposed Missouri-specific language, which allows options for compliance or 2) EPA's rule language as they drafted it. We cannot take apart pieces of the proposed language. It seems imprudent to promulgate language that it knows will likely result in the loss of SPA in the future. Knowing that these are the two (2) options, and based upon repeated and numerous UST owner/operator requests for state-specific options in this amendment, the department will retain the state-specific, proposed language as requested. As such, no change is proposed in response to this comment.

COMMENT #5: Ms. Eighmey provided written comments indicating the proposed language in the interior lining portion of this rule is confusing. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Based on Ms. Eighmey's comments about confusion and clarity, the department has opted to make changes to some of the language in the rule. One (1) comment indicated that it was unclear when the requirement in subsection (3)(A) becomes effective, because it appears to only be effective after January 1, 2020. That interpretation is correct and that is what the rule states. The department is giving time to lining manufacturers to get their products UL1856 listed, if not already completed, prior to the requirement going into effect. The rule, though, still requires compliance with all current interior lining standards, at a minimum, until that compliance date. As such, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #6: Ms. Eighmey provided written comments raising concerns about allowing multiple repairs to a lining system. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: The regulation requires demonstration that the lining and tank system meets certain standards, continues to function as installed, basically to demonstrate that it is not leaking. As long as the lining system, whether repaired or replaced, continues to be tested, inspected, and documented to be functioning properly, the department did not feel it necessary to limit the number of repairs and/or replacements. This decision was supported by the UST owners and operators in the informal outreach leading up to the proposed amendment, as they continually requested the ability to prove their system works. Furthermore, a cost estimate associated with requiring permanent closure after two (2) failed linings was not conducted. This would be a significant cost for many small business owners; it was not included in the regulatory impact report or small business review. This proposal should be reviewed prior to future rulemaking efforts, though. As such, no change is proposed in response to this comment.

COMMENT #7: Ms. Eighmey provided a written comment noting that a version of the underwriters laboratory *1856 Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems* did not include the version or publication year. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey is correct, as the UL 1856 reference should have been included in the final list of approved codes and standards, but it was accidentally omitted from the list. The department has added the UL standard,

with publication date, in the text of the Order of Rulemaking, specifically in section (7) which lists approved standards and codes. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #8: Ms. Eighmey provided written comments providing alternative language for the interior lining rule package. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: Ms. Eighmey's proposed alternative language actually changes the content and requirements of the rule, potentially eliminating some requirements for certain systems. This language is not simply a re-arrangement or change for clarity. As such, no change is proposed in response to this comment.

COMMENT #9: Ms. Eighmey provided a written comment that section (6) seemed out of place and redundant, as it was already provided in 10 CSR 26-2.020. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This rule, 10 CSR 26-2.021, specifically applies to upgraded UST systems. 10 CSR 26-2.020 applies to "new" (non-upgraded) UST systems. These are two (2) different groups of UST systems. The dispenser replacement language must be applicable to both set of UST systems. This language must be included in this rule to ensure that an upgraded UST system is subject to the same dispenser replacement requirements as any other operating UST system. As such, no change is proposed in response to this comment.

COMMENT #10: Ms. Eighmey provided a written comment that a period was needed in place of a semi-colon at the end of subparagraph (3)(A)1.G. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This entire subsection (A) is part of a larger list under section (3), with it being the first in a list that includes subsections (A), (B), and (C). As such, the period goes at the end of the section, not in the middle of the list, in accordance with the secretary of state's formatting requirements. As such, no change is proposed in response to this comment.

#### 10 CSR 26-2.021 Upgraded Underground Storage Tank Systems

(3) Tank Upgrading Requirements. Tanks must be upgraded to meet one (1) of the following requirements in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory:

(A) Interior Lining or Tank Retrofit. A tank may be upgraded by internal lining or retrofit if—

1. The lining is installed in accordance with the requirements of 10 CSR 26-2.033 and the lining or retrofit meets the following additional requirements:

A. All linings installed or repaired on or after January 1, 2020, must meet the design specifications of Underwriters Laboratories (UL) *1856 Outline of Investigation for Underground Fuel Tank Internal Retrofit Systems* requirements;

B. Inspections and repairs must be conducted by a technician who is properly certified by NACE International or International Code Council (ICC);

C. The lining or retrofit is installed according to manufacturer installation requirements;

D. An approved national code or standard, including those listed in section (7) of this rule, is followed;

E. For fiberglass-reinforced plastic tanks, all linings must be approved by the tank manufacturer and installed in accordance with the tank manufacturer's requirements. If the tank manufacturer is no longer available or willing to repair the tank, the tank may be lined in accordance with—

(I) The manufacturer's requirements, or

(II) The Fiberglass Tank & Piping Institute T-95-1. *Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks*, Revised 1995. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Fiberglass Tank and Piping Institute, <http://www.fiberglasstankandpipe.com>; and

(III) By a technician who is properly certified by NACE International, International Code Council (ICC), or the American Composites Manufacturers Association;

F. All linings must be installed, inspected, repaired, and maintained in accordance with one (1) of the following:

(I) For UL 1856 Lining systems, single-walled, co-structural systems and linings installed prior to January 1, 2020:

(a) A lining may only be repaired if the tank passes an integrity test, including actual shell thickness readings for steel tanks. Approved integrity test methods are included in section (7) of this rule;

(b) A lining may only be installed if the new lining meets the UL 1856 specifications and the steel tank passes an integrity test, including actual steel shell thickness readings. Approved integrity test methods are included in section (7) of this rule;

(c) The lining must be internally inspected at least every five (5) years and found to be structurally sound with the lining still performing in accordance with the original design specifications;

(II) For UL 1856 Upgrade systems, double-walled, co-structural systems:

(a) A lining may only be installed or repaired if the tank passes an integrity test, including actual shell thickness readings for steel tanks. Approved integrity test methods are included in section (7) of this rule; and

(b) The lining must be internally inspected at least every five (5) years and found to be structurally sound with the lining still performing in accordance with the original design specifications; or

(c) The interstitial lining space is electronically monitored, with passing sensor status reports for the most recent twelve (12) months, in accordance with 10 CSR 26-2.043 subsection (1)(H);

(III) For UL 1856 Structural systems, double-walled, self-structural systems—

(a) The lining must be internally inspected at least every five (5) years and found to be structurally sound with the lining still performing in accordance with the original design specifications; or

(b) The interstitial lining space is electronically monitored, with passing sensor status reports for the most recent twelve (12) months, in accordance with 10 CSR 26-2.043 subsection (1)(H);

G. All interior lining inspection reports must include photographs of the tank bottom, a representative tank side wall and a representative tank end, and documentation of the interior lining hardness and thickness readings, in accordance with the evaluation guidance document used;

(7) The following codes and standards may be used to comply with this rule:

(E) National Leak Prevention Association Standard 631, *Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection*, revised 1999. This standard may only be used for interior lining application and inspection, not for inspection of the steel tank integrity. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the National Leak Prevention Association, (815) 301-2785, [www.nlpa-online.org](http://www.nlpa-online.org);

(F) Ken Wilcox Associates Recommended Practice, *Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera*, September 28, 1999. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact Ken Wilcox Associates, 1125 Valley Ridge Drive, Grain Valley, MO 64029, (816) 443-2494, [www.kwaleak.com](http://www.kwaleak.com); and

(G) Underwriters Laboratory (UL) *1856 Outline of Investigation*

for *Underground Fuel Tank Internal Retrofit Systems*, June 2013. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Underwriters' Laboratories, 333 Pfingsten Road, Northbrook, IL 60062-2096, (847) 272-8800, [www.ul.com](http://www.ul.com).

*REVISED PUBLIC COST:* No changes were made to the costs associated with the state-specific requirements in this rule; as such, the state-specific costs provided in the original fiscal note have not changed, except for correcting the percentage of sites that are privately and publically owned. The cost for the public sector to comply with the proposed state-specific requirements is one hundred forty-four dollars (\$144) annually with an additional six hundred forty dollars (\$640) one- (1-) time cost for this rule. The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

*REVISED PRIVATE COST:* No changes were made to the costs associated with the state-specific requirements in this rule; as such, the state-specific costs provided in the original fiscal note have not changed, except for correcting the percentage of sites that are privately and publically owned. The cost for the private sector to comply with the proposed state-specific requirements is one thousand six hundred fifty-six dollars (\$1,656) annually with an additional seven thousand three hundred sixty dollars (\$7,360) one- (1-) time cost for this rule. The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.

REVISED FISCAL NOTE  
PUBLIC COST

## I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.021 Upgraded Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

## II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>Approximately 900 tanks at 425 facilities</p> <p>92% are privately owned and 8% are publically owned</p> <p>Only one contractor indicated he did not meet the training requirements</p> <p><i>Specific for this rule</i></p> <p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p> <p><i>Covers 25 rules</i></p>	<p>\$720 (every 5 years) or <b>\$144 (annual)</b> for the documentation requirements</p> <p><b>\$640 one-time cost</b> split between all owners (8% of the one-time cost to one contractor)</p> <p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = <b>\$195,624 annually</b></p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	<p>The Department of Natural Resources staff review compliance documents for these UST facilities</p>	<p><b>Estimated \$1,621.44</b> annually additional costs associated with the new federal regulations</p>



<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	<i>Covers 25 rules</i> PSTIF also reviews compliance documents for these UST facilities	<b>Estimated \$18,504.90 annually</b> <b>+ \$102,000 one-time</b> for costs associated with implementing the new federal regulations
	<i>Covers 25 rules</i> <b>Total annual public cost:</b>	<b>\$215,894.34 annually</b> + <b>\$102,640 one-time cost</b>

## II. WORKSHEET

For the calculations on the cost of the state proposed changes in this rule, specifically the requirement to tie-down new UST systems at installation, please see the calculations below in Section IV.

Additionally, in this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note.

EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher

costs for many sites and many owner/operators (but that “higher” cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri’s amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource’s expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department’s costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility’s compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year)

and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

### III. ASSUMPTIONS

The department is withdrawing the proposal to require installation notifications for piping installations. The remainder of the proposed amendments to this rule remain unchanged.

A proposed change is to require new marinas to comply with the Petroleum Equipment Institute's Recommended Practice 1000-2009, Recommended Practices for the Installation of Marina Fueling Systems. These tanks are in environmentally sensitive areas, where a leak would impact water ecosystems almost immediately. In addition, these systems are uniquely configured, with the tanks typically above the dispensers, which could allow the tank to be siphoned by the dispensers. These configurations can lead to significant leaks in environmentally sensitive areas. The department has been recommending the use of this guidance document since its publication in 2009. The Missouri Department of Agriculture has been requiring compliance with almost all, if not all of its significant pieces as well. The department is not aware of any marina UST installations that have not complied with this guidance document in the last four years. As such, we do not believe that compliance with this proposed change has a new cost associated with it, but do believe it will ensure clear requirements and environmental protection in the future.

The department is also adding an option for post-installation tightness testing. Currently the regulations only provide one option for testing the tank after installation, a tank tightness test. The proposed regulation will add a second option, testing the tank using the automatic tank gauge with the tank 95% full. As this is a new, second option, it does not add a cost, but instead lowers the cost by creating a new, potentially less costly option for compliance.

The final proposed change in this regulation is to require all new tanks be tied down. In the last three years, we have typically seen less than 10% of the tanks that are not tied down at install. With an average of 155 new tanks installed each year, that means that typically 15 tanks are not tied down. These tanks can float, leak product, cause damage to the site, hinder property sales, cause safety issues, and be a general nuisance. Based on information from installation contractors, the cost of a contractor-manufactured tie-down system is approximately \$2,000. Please note, though, that the costs to address tanks that float are much higher than \$2,000 per tank. They must be removed and leaks addressed. In addition, a tank that has floated can pose a significant safety hazard: it juts out of the ground; they can be difficult to see; they may cause vehicular damage; there are often open holes associated with them.

The following assumptions were used in calculating the cost of implementing all of the federal rule package requirements, which includes 25 amended and added rules in this state rule package:

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.021 Upgraded Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>Approximately 900 tanks at 425 facilities 92% are privately owned</p> <p>Only one contractor indicated he did not meet the training requirements</p> <p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p> <p><i>Covers 25 rules</i></p>	<p>\$8,280 (every 5 years) or <b>\$1,656 (annually)</b></p> <p><b>\$7,360 one-time cost</b> split between all owners (92% of the one-time cost to one contractor)</p> <p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = <b>\$2,249,676 annually</b></p>
<b>TOTAL ANNUAL COST:</b>		<b>\$2,251,332 annually + \$7,360 one-time cost</b>

### III. WORKSHEET

See calculations in Section IV below for the rule-specific changes, specifically the cost to tie-down underground storage tanks (UST) at installation.

Additionally, in this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note.

EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

The Department is proposing changes to old, lined tanks that are typically beyond their warranty and life-expectancy. These regulations are being changed to ensure that these tanks are being inspected and repaired in a way that confirms that they remain leak-free as long as they are operational. EPA's UST regulation changes include modifications to the interior lining regulations. Specifically, their regulations require interior lined tanks be closed/replaced if the

interior lining fails. The Department's proposed alternative requirements for interior linings, include:

- (1) Linings must meet the new UL 1856 installation standard,
- (2) Technicians must be certified (technicians must be certified to do work in almost every other aspect of UST service),
- (3) Documentation must include photographs,
- (4) An additional, less costly inspection option,
- (5) A new technology that allows repair of a lined tank that might otherwise, under the federal regulations, have to be closed.

While pieces of this regulation may be more costly than the new regulation, the proposed interior lining rule must be considered in its entirety as an alternative to the EPA federal regulation, including the closure requirement.

Furthermore, the Department is only aware of four companies that conduct interior lining installation and repair work in Missouri. Of those four companies, three of them already comply or are in the process of complying with the proposed regulations. As such, the proposed regulations have no associated increased costs to three of the four (including the two predominant companies) in Missouri. As the cost to permanently close a tank can be around \$15,000-\$20,000, the cost for the alternative interior lining rule package, which includes more detailed interior lining requirements, but doesn't require permanent closure in the event of a failure, is a less costly requirement than the federal version of the same rule package.

The one contractor that does not already meet the proposed regulations indicated that it would cost approximately \$8,000 total to comply with the training and certification requirements. This is a one-time cost, which we assume will be passed down to the tank owners (split between privately public owners). He indicated that he believed his product is already tested to be certified under UL1856; as such, there would be no additional costs to comply with this requirement for his company.

As for the additional documentation requirements, he indicated that he already does the additional documentation at some of the sites where he conducts interior lining inspections and installations. According to state records, he conducted approximately 13% of the interior lining inspections and installation; as he already complies with the additional documentation requirements at some of his sites, the Department used 10% of the lined tanks requiring additional documentation for the purposes of this RIR. The company that would need the additional documentation indicated that this would likely cost around \$250 per *facility* report. As we have about 900 active lined steel tanks at approximately 355 facilities, this would leave approximately 35 lined tank facilities that would need additional documentation for the lining inspections and installations. With an expected 36 facilities needing additional documentation, costing \$250 per facility report, we expect a total cost every five years (the interior lining inspection cycle) of \$9,000, so the average *annual* cost is \$1,800.

Please note, the federal alternative would likely require permanent closure of some of these tanks, which could cost \$15,000-\$20,000 per tank.

Also included in this proposed rule is an additional, alternative interior lining inspection option. Some facilities opt to use interstitial monitoring to comply with tank release detection requirements. This monitoring could be used to meet the interior lining inspection. If a site is using interstitial monitoring, the Department could accept 12 months of interstitial monitoring records in lieu of the standard interior lining inspection. As an interior lining inspection can cost \$2,000-\$5,000 per tank, this is a potential significant cost savings per lined tank.

Based on our data, it appears that 92% of the sites are privately owned; the remaining 8% are publically owned.

The following assumptions were used in calculating the cost of implementing all of the federal rule package requirements, which includes 25 amended and added rules in this state rule package:

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.



**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.103, 319.105, 319.107, 319.111, 319.114, 319.123, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.022 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1159). No changes were made to the text of this proposed amendment, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of \$715 per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**10 CSR 26-2.022 Notification Requirements**

**REVISED PUBLIC COST:** *The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

**REVISED PRIVATE COST:** *The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

## I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.022 Notification Requirements</i>
Type of Rulemaking	<i>Amendment</i>

## II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

## REVISED FISCAL NOTE PRIVATE COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.022 Notification Requirements</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (c.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.



**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1159-1161). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were

made in response to this comment.

**COMMENT #3:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

**COMMENT #4:** In her written comments, Ms. Eighmey suggested sections (6) and (7) be written in active voice. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** Ms. Eighmey's suggestion might be read to require the owner or operator to actually "conduct" something, a test in this scenario. The department is not requiring an owner or operator to do the work themselves; in fact, owners and operators should not do the test or other work themselves unless they are properly trained in the procedures and knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner must have systems that have or are being monitored/tested, not do it themselves. As such, no change is proposed in response to this comment.

**COMMENT #5:** In her written comments, Ms. Eighmey noted a typo in the name of the release detection workgroup, which should be National Work Group *on* Leak Detection Evaluations. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The department appreciates Ms. Eighmey's catch of the typo and has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #6:** In her written comments, Ms. Eighmey noted a typo in section (4), specifically that the word "complete" was used twice. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The department appreciates Ms. Eighmey's catch of the typo and has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #7:** In her written comments, Ms. Eighmey suggested alternative language for section (5), active rather than passive terms. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** Ms. Eighmey's suggestion might be read to require the owner or operator to actually "conduct" something, a test or inspection in this scenario. The department is not requiring an owner or operator do the work themselves; in fact, owners and operators should not do the test, inspection or other work themselves unless they are properly trained in the procedures, by the manufacturer, if required, and are knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner/operator must have equipment that have or are being inspected/tested, not do it themselves. As such, no change is proposed in response to this comment.

**COMMENT #8:** In her written comments, Ms. Eighmey noted that the alternative test method language in (5)(C) referenced section (3) rather than the current section. She recommended that be changed to reference the requirements contained within the same section, section (5). A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The department appreciates Ms. Eighmey's catch of the typo and has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #9:** In her written comments, Ms. Eighmey suggested alternative language for sections (6) and (7), active rather than passive terms. She also suggested changing "out-of-use" to "out-of-operation." A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** Ms. Eighmey's first suggestion might be read to require the owner or operator to actually "conduct" something, a test or inspection in this scenario. The department is not requiring an owner or operator do the work themselves; in fact, owners and operators should not do the test, inspection or other work themselves unless they are properly trained in the procedures, certified by the manufacturer, if required, and are knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner/operator must have equipment that have or are being inspected/tested, not do it themselves. As such, no change is proposed in response to this comment.

Ms. Eighmey also suggested changing "out-of-use" to "out-of-operation." That would create inconsistent language, as the entire rule applies to *in-use* tanks, at Ms. Eighmey's specific suggestion. As such, a tank that is "out-of-operation" for an extended period of time, but that still contains fuel, is subject to the inspection and/or testing requirements of this rule. As such, no change is proposed in response to this comment.

**COMMENT #10:** In her written comments, Ms. Eighmey suggested requiring records be maintained for three (3) years or until the next test or inspection is conducted. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** The currently proposed language is direct from the

EPA regulations. The department used their timeframes and submitted this language for pre-review from EPA. Ms. Eighmey's suggestion may be viewed as less stringent than EPA's. As such, no change is proposed in response to this comment.

COMMENT #11: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth's comment is a question concerning whether there are "specific leak test methods for AHS piping."

RESPONSE: This is the spill equipment and overfill prevention equipment rule. This rule does not require testing of piping. We realize that spill and overfill prevention equipment may not be in place at this site as the delivery system is hard-piped into the airport hydrant fuel distribution system. This is not entirely unique and a waiver for alternative spill and overfill prevention is allowed. But this comment pertains to test methods. This rule outlines requirements for spill and overfill prevention and *equipment* testing; as such, the comment about test methods for piping does not appear relevant to this rule. As such, no change is proposed in response to this comment.

#### 10 CSR 26-2.030 Spill and Overfill Control for In-Use Underground Storage Tank Systems

(3) Owners and operators must meet one (1) of the following requirements to ensure their spill prevention equipment is operating properly and will prevent releases to the environment:

(B) The spill prevention equipment is tested at least triennially to ensure the spill prevention equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one (1) of the following:

1. Requirements developed by the manufacturer (Note: This option may only be used if the manufacturer has developed testing requirements. Self-testing apparatus may only be used if pre-approved by the department as a valid functionality test.); or

2. Interstitial test (for double-walled spill basins only) or spill containment test listed by the National Work Group on Leak Detection Evaluations. To obtain copies of equipment certifications, contact the National Work Group on Leak Detection Evaluations, [www.nwglde.org](http://www.nwglde.org); or

3. Petroleum Equipment Institute RP 1200-12, *Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, [www.pei.org](http://www.pei.org); or

4. Other methods approved by the department, which may include a code of practice developed by a nationally recognized association or independent testing laboratory, determined to be no less protective of human health and the environment than the requirements listed in paragraphs 1. through 3. of this subsection.

(4) Spill basins may not be repaired with a partial or spot, field-applied repair kit or product. Repairs must either be a manufacturer-designed replacement insert or a complete factory-built, field-installed spill basin repair kit. Other repairs may be approved by the department if they are determined to be no less protective of human health and the environment.

(5) Owners and operators must ensure their overfill prevention equipment is operating properly and will prevent releases to the environment. Overfill prevention equipment must be inspected or tested at least triennially. At a minimum, the test or inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in 10 CSR 26-2.020 and will activate when the regulated substance reaches that level. Tests or inspections must be conducted

in accordance with one (1) of the following criteria:

(C) Other methods approved by the department, which may include a code of practice developed by a nationally recognized association or independent testing laboratory, determined to be no less protective of human health and the environment than the requirements listed in subsections (A) or (B) of this section.

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.030 Spill and Overfill Control for In-Use Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (c.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

## REVISED FISCAL NOTE PRIVATE COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.030 Spill and Overfill Control for In-Use Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>



### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.031 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1161–1162). No changes were made to the text of this proposed amendment, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this Order of Rulemaking.

**COMMENT #2:** Ms. Eighmey provided a written comment that supports the proposal to require replacement of metal piping if the cathodic protection system has been off for more than ninety (90) days. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** The department appreciates the support, but would like to note that the department believes this is clarifying language, not an actual proposed change in application in the field. The rule had and does state that unprotected systems can only be brought back into use if confirmation of integrity is provided. There are ways to verify integrity of tanks, but there is no industry standard or procedure to verify piping integrity. As such, we believe replacement has always been required, but are providing better language to clarify that intent. As such, no change is proposed in response to this comment.

**10 CSR 26-2.031 Operation and Maintenance of Corrosion Protection**

**REVISED PUBLIC COST:** *The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.031 Operation and Maintenance of Corrosion Protection</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	<p>The Department of Natural Resources staff review compliance documents for these UST facilities</p>	<p>Estimated \$1,621.44 annually additional costs associated with the new federal regulations</p>
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	<p>PSTIF also reviews compliance documents for these UST facilities</p>	<p>Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations</p>
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.



REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	10 CSR 26-2.031 Operation and Maintenance of Corrosion Protection
Type of Rulemaking	Amendment

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garages/ Service Centers</li> <li>Government facilities: fuel dispensing, generator fuel storage</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures (e.g. cellular phone companies)</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

**III. WORKSHEET**

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
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**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105 and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.032 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1162). No changes were made to the text of this proposed amendment, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey provided a written comment, requesting the notice for system changes, under this compatibility rule, be reduced from thirty (30) days to fourteen (14) days, like the new installation notification requirement was changed. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** The notification requirement in this rule, specifically to notify the department at least thirty (30) days prior to switching to storing a biofuel, is a federal requirement, based on the new federal regulations. The new installation notification requirement, and its associated timeframes, is state-specific and, as such, is not subject to the "cannot be any less stringent" than EPA requirement. On the other hand, this regulation must, at a minimum, meet the federal requirements, including notification timelines. As such, no change is proposed in response to this comment.

**10 CSR 26-2.032 Compatibility**

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.032 Compatibility</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>-----</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost



calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

## REVISED FISCAL NOTE PRIVATE COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.032 Compatibility</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total  \$715 per facility x  3,420 facilities x  92% privately owned =  \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.033 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1162-1164). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were

made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is *not* new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: In her written comments, Ms. Eighmey suggested deleting the words "that is" in subsection (2)(E). A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #5: In her written comments, Ms. Eighmey indicated that "we had not previously seen the proposed language in section (F)..." and suggested a change. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: Ms. Eighmey published this language in the PSTIF Advisory Committee materials for the meeting held on June 14, 2016, ([http://www.pstif.org/agenda\\_advisory\\_committee.html](http://www.pstif.org/agenda_advisory_committee.html)). The content of the language in her own publication is exactly the same as the rule language published in the *Missouri Register* on September 15, 2016, with one (1) minor change of a period to a semi-colon made by the secretary of state's office.

In response to the suggested change, Ms. Eighmey's suggested language would require the owner or operator to actually "conduct" something, a test or a repair in this scenario. Some of her suggested language changes would result in a rule that only requires post-repair

testing if the owner/operator does the repair himself, but not necessarily if a contractor does the repair. The department is not requiring an owner or operator to do the work themselves; in fact, owners and operators should not do the test, repairs, or other work themselves unless they are properly trained in the procedures and knowledgeable in the relevant aspects of the UST system. The department uses passive voice because the owner must have systems that have or are being monitored, tested, and properly repaired, not do it themselves. As such, no change is proposed in response to this comment.

#### 10 CSR 26-2.033 Repairs Allowed

(2) The repairs must meet the following requirements:

(E) Repaired tanks and/or piping must be tightness tested in accordance with release detection methods listed in 10 CSR 26-2.043(1)(D) and 10 CSR 26-2.044(1)(B) within thirty (30) days following the date of the completion of the repair, unless tested using another method determined by the department to be no less protective of human health and the environment.

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.033 Repairs Allowed</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
• Missouri Department of Natural Resources	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually • \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra



documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.033 Repairs Allowed</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.107, 319.111, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.034 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1164). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** In her written comments, Ms. Eighmey suggested rephrasing paragraph (1)(A)1. so that it is consistent with the other paragraphs. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The suggested change is accepted. The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #3:** In her written comments, Ms. Eighmey suggested alternative, shorter language for paragraph (1)(B)1. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The suggested change is accepted. The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #4:** Ms. Eighmey suggested deleting the words "and all other ancillary equipment" in her written comments, indicating that it ties to her comment opposing the definition of UST system. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above. In Ms. Eighmey's additional written comments on this topic, she noted that "no explanation has been provided as to why the rulemaking proposes a broader definition."

**RESPONSE:** The definition of "underground storage tank" or UST has not changed since 1989, which is when the Missouri Statutory definition of underground storage tank was written in section 319.100(16), RSMo. While many other EPA definitions were included in the Missouri rule by reference, this specific definition was not. Instead the rule referenced the Missouri statute.

The original (circa 1986) federal definition of underground storage

tank, as provided in 40 CFR 280.12, “means any one or combination of tanks (including *underground* pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground.” (Emphasis added)

The original (established 1989) Missouri statutory definition of underground storage tank is “any one or combination of tanks, including pipes connected thereto, used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is ten percent (10%) or more beneath the surface of the ground.”

There is one (1) word different between the two (2) definitions- the word in question discussed in Ms. Eighmey’s comments. As state statute supersedes state rule, and as the statutory definition was incorporated by reference into the state rule, it is clear that the definition included in this draft is, in fact, the same definition provided in section 319.100 of the Revised Statutes of Missouri. In this respect we agree with Ms. Eighmey’s comments: the definition has not changed in twenty-seven (27) years. The definition has remained the same since written into statute in 1989.

Since the definition is not actually changing, Missouri’s implementation is not changing. To clarify this, though, please note the following:

1) The department already regulates aboveground piping associated with UST systems; the PSTIF has required compliance monitoring and/or documentation for some aboveground piping. For example, if an underground tank has pressurized piping that is aboveground, so long as ten percent (10%) or more of the entire system is belowground, the department requires gross monitoring of the line. Both DNR and PSTIF regularly exempt these types of piping from being equipped with line leak detector, but specifically provide a waiver indicating that aboveground pressurized piping that is easily visible while operating could meet this requirement with simple visual detection (meaning that a person in the area would immediately notice a three (3.0) gallon per hour leak, as required by the piping release detection regulation).

2) DNR and the Missouri Department of Agriculture have an *informal* understanding that, as the Missouri Department of Agriculture inspects dispenser areas two (2) times and as the fire code, which they enforce, provides extensive and thorough requirements in the dispenser area, DNR does not typically conduct extensive inspections in the dispenser cabinet, above the shear valve.

That being said, though, the department regularly responds to releases from equipment above the shear valve in the dispenser area; PSTIF has claims for releases from equipment in the dispenser area. In Federal Fiscal Year 2016 alone, the department reported five new releases from the dispenser areas. The PSTIF has corresponding claims associated with these five (5) releases.

As repeatedly stated herein, the department does not believe there to be any change in the definition for regulated underground storage tanks. It was previously found only in the statute, but incorporated by reference into the regulation. At this time, the proposed change is simply including the actual statutory language in the rule, so that the definitions may be found in one (1) location. We are not changing the definition, how it is interpreted, or how the department will implement the rule from current practices. A fiscal assessment is not required. This is not a change in definition, merely a change in location for clarity, at the request of the regulated community. No change is made in response to this comment.

COMMENT #5: In her written comments, Ms. Eighmey suggested rephrasing paragraph (1)(B)5. for clarity. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested

change is accepted. The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #6: In her written comments, Ms. Eighmey suggested alternative language for paragraph (1)(B)6., indicating that the rule language does not include recordkeeping timeframes. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

COMMENT #7: In her written comments, Ms. Eighmey suggested alternative language for paragraph (1)(B)7., indicating that the rule language does not include recordkeeping timeframes. comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE TO COMMENTS #6 AND #7: For both of these referenced rules, the detailed requirements and options for recordkeeping are outlined within the referenced rule. Duplicating that language herein would be duplicative and is unnecessary as the requirement is detailed within the relevant rule itself. Furthermore, shortening the language to the suggested language provided by Ms. Eighmey would make it inconsistent with the more comprehensive language found within the relevant rules. As such, no change is proposed in response to these comments.

COMMENT #8: In her written comments, Ms. Eighmey suggested adding language in this rule to include a reference to the requirement to retain documentation of a valid financial responsibility mechanism, thereby making this a more comprehensive list. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The suggested change is accepted. The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #9: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth’s comment indicates that this rule cites 10 CSR 26-2.078 as a requirement for investigation of soil and groundwater, which references the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document*. Mr. Landreth indicates that the airport cannot meet these requirements and the regulation should allow alternative options.

RESPONSE: First, this rule lists the documentation retention requirements. This is not the rule that requires compliance with 10 CSR 26-2.078, any other investigation or corrective action rules, or the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document* per se. As such, this comment does not appear relevant to this rule.

That being said, airport hydrant fuel distribution systems were previously deferred from compliance with 10 CSR 26-2.020 through 10 CSR 26-2.064. These tanks have not been deferred from any of the “remediation” regulations in 10 CSR 26-2.070 through 10 CSR 26-2.083, which includes the regulation specifically referenced in Mr. Landreth’s comment, 10 CSR 26-2.078. So, compliance with 10 CSR 26-2.078 has been required for many years. No change is occurring now.

Furthermore, the airport hydrant fuel distribution system has had at least seven (7) releases, five (5) of which are currently being addressed under the *Missouri Risk-Based Corrective Action Process for Petroleum Storage Tanks Guidance Document*. As this facility has been subject to this rule, and has been conducting investigations and corrective action under the referenced guidance document, it appears that this facility can, in fact, meet these standards. As such, no change is proposed in response to this comment.

COMMENT #10: Mr. Landreth submitted comments on behalf of

the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth's comment on this rule discusses inspection frequency and the request to amend the inspection procedures for airport hydrant fuel distribution systems.

RESPONSE: Inspection frequency is not covered in this, or any of the other state UST regulations, proposed and open for revision at this time. The inspection frequency is established in the 2005 Energy Policy Act, meaning it is required under federal law. The procedure can be discussed between EPA, the department, and the facility. EPA is currently working on an inspection procedure specifically for airport hydrant fuel distribution systems. Furthermore, the department has already discussed potential inspection issues with facility staff and expect to continue those discussions in the future. As such, this comment is not relevant to the rule. No change is proposed in response to this comment.

### 10 CSR 26-2.034 Reporting and Record Keeping

(1) Owners and operators of underground storage tank (UST) systems must cooperate fully with inspections, monitoring, and testing conducted by the department, or the department's authorized representative, as well as requests for document submission, testing, and monitoring.

(A) Reporting. Owners and operators must submit the following information to the department:

1. Notification for all UST systems (10 CSR 26-2.022);
2. Reports of all releases including suspected releases (10 CSR 26-2.050), spills and overfills (10 CSR 26-2.053), and confirmed releases (10 CSR 26-2.071);
3. Corrective actions planned or taken including initial abatement measures (10 CSR 26-2.072), initial site characterization (10 CSR 26-2.074), free product removal (10 CSR 26-2.075), investigation of soil and groundwater cleanup (10 CSR 26-2.078), and corrective action plan (10 CSR 26-2.082); and
4. A notification before permanent closure or change in service (10 CSR 26-2.061).

(B) Record Keeping. Owners and operators must maintain the following information:

1. Installation records for any UST system or system component installed after July 1, 2017;
2. Documentation of operation of corrosion protection equipment (10 CSR 26-2.031);
3. Documents demonstrating compatibility of UST systems, including tanks, piping, release detection equipment, and all other ancillary equipment with the regulated substance being stored (10 CSR 26-2.032);
4. Documentation of UST system repairs (10 CSR 26-2.033);
5. Documentation demonstrating spill and overfill prevention equipment is being properly maintained and inspected or tested (10 CSR 26-2.030);
6. Documentation of containment sump testing results (10 CSR 26-2.035);
7. Documentation of periodic walk-through inspections (10 CSR 26-2.036);
8. Recent compliance with release detection requirements (10 CSR 26-2.048);
9. Results of the site investigation conducted at permanent closure (10 CSR 26-2.064);
10. Documentation demonstrating compliance with the operator training rule (10 CSR 100-6); and
11. Documentation demonstrating a valid financial responsibility mechanism is in effect (10 CSR 26-3).

*ment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assess-*



REVISED FISCAL NOTE  
PUBLIC COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.034 Repairs Allowed</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.034 Repairs Allowed</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

**III. WORKSHEET**

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby adopts a rule as follows:

10 CSR 26-2.035 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1165). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this rule are described below, as well as any change made to the text of the proposed rule in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters, noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed rules, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider

this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were made in response to this comment.



COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on a broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey's written comment provided alternative language for the entire containment sump testing rule. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The alternative language provided does not simply provide changes to make it clearer, but in fact, changes the content of the regulation. For example, if a sump has two (2) walls, the inner wall fails, but the outer wall is still leak-tight, under the state language, the outer wall would become the primary wall and could be tested. Under the suggested language, both walls must be monitored or the inner wall can be tested. The suggested language, in a number of ways, is actually more limiting in its application. The comment did cause the department to realize that the current language also limits containment sumps that could potentially in the future, have three (3) walls, much like the triple-walled fiberglass tanks that are available. As such, one portion of the language was tweaked to say *at least* two (2) walls. Ms. Eighmey's suggested language separated the portion of the rule that includes the approved procedures. This suggestion is accepted and appropriate changes made. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

Furthermore, Ms. Eighmey's language indicated that the interstitial integrity assessment must be conducted with an interstitial sensor. Again, that language limits options that could be allowed under the department's language, like a manual check or a single interstitial test conducted with equipment that does not include an interstitial sensor (e.g. vacuum or pressure gauge). As such, no change is pro-

posed in response to this comment.

#### 10 CSR 26-2.035 Testing of Containment Sumps

(1) Owners and operators of underground storage tank (UST) systems with containment sumps required by 10 CSR 26-2.020 and/or 10 CSR 26-2.021, must ensure the continued integrity of required containment sumps by meeting one (1) of the following requirements:

(A) The containment sump has at least two (2) walls and an interstitial space and the integrity of two (2) walls is interstitially monitored annually; or

(B) The containment sump primary wall is tested at least triennially to ensure the equipment is liquid-tight by using vacuum, pressure, or liquid testing.

(2) The testing and/or monitoring required by this rule must be conducted in accordance with one (1) of the following:

(A) A tightness test developed and published by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed testing requirements.);

(B) An interstitial test or containment sump test listed by the National Work Group on Leak Detection Evaluations. To obtain copies of equipment listings, contact the National Work Group on Leak Detection Evaluations, [www.nwglde.org](http://www.nwglde.org); or

(C) Petroleum Equipment Institute RP 1200-12, *Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, [www.pei.org](http://www.pei.org); or

(D) Another method approved by department, including code(s) of practice developed by a nationally recognized association(s) or independent testing laboratory(ies), determined to be no less protective of human health and the environment than the requirements listed in subsections (A) through (C) of this section.

(3) Owners and operators must maintain record(s) of the required containment sump monitoring for twelve (12) months or test(s) required by this rule until the next test is performed.

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

## I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.035 Testing of Containment Sumps</i>
Type of Rulemaking	<i>New Rule</i>

## II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

## II. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

### REVISED FISCAL NOTE PRIVATE COST

#### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.035 Testing of Containment Sumps</i>
Type of Rulemaking	<i>New Rule</i>

#### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

#### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.



**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby adopts a rule as follows:

10 CSR 26-2.036 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1165–1166). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this rule are described below, as well as any change made to the text of the proposed rule in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed rules, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider

this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is *not* new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey's written comment provided alternative language for the entire walkthrough inspection rule. She noted that EPA allows a less frequent walkthrough inspection and requested that flexibility. She also requested an option for an alternative procedure. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: EPA's original language indicated that sites that receive deliveries less frequently (deliveries are more than thirty (30) days apart) can comply with the "monthly" walkthrough inspection requirements only immediately before a delivery.

The other suggested language comments did not appear to change content, but simply seemed to be a preference in language. Other than the suggested changes provided in Ms. Eighmey's first section, which make the rule apply to a site rather than a responsible party, the changes are largely made, as suggested, in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

#### 10 CSR 26-2.036 Operation and Maintenance Walkthrough Inspections

(1) To properly operate and maintain underground storage tank (UST) systems, owners and operators must ensure the following requirements are met:

(A) Owners and operators must ensure walkthrough inspections are conducted as follows:

1. Spill prevention equipment must be checked at least once every thirty (30) days, or prior to each delivery for USTs that receive deliveries less frequently than once every thirty (30) days. The person(s) conducting the inspection must visually check for any damage, remove liquid or debris, check for and remove obstructions in the fill pipe, check the fill cap to make sure it is securely on the fill pipe, and for double-walled spill prevention equipment using interstitial monitoring, check for a leak in the interstitial area; and

2. Release detection equipment must be checked at least once every thirty (30) days. The person(s) conducting the inspection must check to make sure the release detection system is operating with no alarms or other unusual operating conditions present and ensure records of release detection testing are reviewed monthly and are current;

(B) At least annually, owners and operators must ensure the following is done:

1. Containment sumps required in 10 CSR 26-2.020 or 10 CSR 26-2.021, including tank top or submersible turbine pump, under-dispenser, and transition or intermediate sumps, must be visually checked for any damage, leaks to the containment sump area, or releases to the environment; liquid or debris must be removed; and the interstitial space of double walled containment sumps must be checked for leaks; and

2. Tank gauge sticks or other hand held release detection equipment must be checked for operability and serviceability;

(C) The first walkthrough inspections in this section are due—

1. Immediately upon installation for new UST systems installed after July 1, 2017; or

2. No later than January 1, 2020, for existing UST systems;

(D) Owners and operators may use the following codes to comply with this rule:

1. Petroleum Equipment Institute RP 500-11, *Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, [www.pei.org](http://www.pei.org);

2. Petroleum Equipment Institute RP 900-08, *Recommended Practices for Inspection and Maintenance of UST Systems*. This document is incorporated by reference without any later amendments or modifications. To obtain a copy, contact the Petroleum Equipment Institute, Box 2380, Tulsa, OK 74101-2380, (918) 494-9696, [www.pei.org](http://www.pei.org); and

3. Another method approved by department, including code(s) of practice developed by a nationally recognized association(s) or independent testing laboratory(ies), determined to be no less protective of human health and the environment than the requirements listed in this rule; and

(E) Owners and operators must maintain records (in accordance with 10 CSR 26-2.034) of the inspections required by this rule for one (1) year. The record must include a list of each area checked, whether each area checked was acceptable or needed action, and a description of any actions taken as a result of the inspection.

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary*

*of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

## I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.036 Operation and Maintenance Walkthrough Inspections</i>
Type of Rulemaking	<i>New Rule</i>

## II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

**REVISED FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.036 Operation and Maintenance Walkthrough Inspections</i>
Type of Rulemaking	<i>New Rule</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

**III. WORKSHEET**

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included



in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
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3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, 319.111, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1166–1167). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to

maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address

concerns prior to actual implementation. As such, no changes were made in response to this comment.

**COMMENT #3:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is *not* new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

**COMMENT #4:** Ms. Eighmey provided a written comment that the title of the rule indicates the rule applies to *all* UST systems, but the text indicates it is only applicable to *in-use* systems. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The department has made the requested changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #5:** Ms. Eighmey provided a written comment concerning confusion over the term "method" being used in multiple places. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The department appreciates the comment and understands the concern. In response, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #6:** Ms. Eighmey provided a written comment concerning the location of the operability requirements. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** Some form of operability requirement applies to almost every release detection method, depending on how it is being conducted. As such, the department believes that this is the most appropriate location for this language. As such, no change is proposed in response to this comment.

**COMMENT #7:** Ms. Eighmey provided a written comment concerning confusion over the term "existing sites" and proposed alternative language. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The department appreciates the comment and understands the concern. In response, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #8:** Ms. Eighmey provided a written comment requesting language be added that clearly states that a battery backup test is not required when the system is monitored remotely. She stated that she understood this to be the department position and requested clarification of this determination. Mr. Greenwalt also submitted a similar comment. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The department appreciates the comment and understands the concern. The department has previously stated that if the records are stored in an alternative location, one not affected by the power loss at the automatic tank gauge, then that electronic record retention on a backup system satisfies the intent of this rule, which is to ensure records are not lost in the event of memory loss on an electronic monitoring system. Please note, remote *monitoring* was not the basis of this allowance; remote location *storage* of records was the basis of this waiver. In response, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

#### **10 CSR 26-2.040 General Requirements for Release Detection for All In-Use Underground Storage Tank Systems**

(1) Owners and operators of underground storage tank (UST) systems that are in-use must use a method, or combination of methods, of release detection that—

(B) Is installed, calibrated, operated, tested, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition. If manufacturer's operability test procedures are not available, the annual operability test may be conducted in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory or a method approved by the department. Operability test reports must, at a minimum, include facility name and address, components tested, model and serial number (if legible), testing date, test method, technician name and affiliation, and a certification of results;

(C) The first operability test is due not later than January 1, 2020 or immediately upon installation if installed after July 1, 2017. Electronic and mechanical release detection equipment must be tested annually for proper operation, in accordance with subsection (B) of this section. A test of the proper operation must be performed at least annually and, at a minimum and as applicable to the facility, cover the following components and criteria:

1. Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup unless records are electronically stored at a remote location;

2. Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks, bends, and breaks; test alarm operability and communication with controller; and

3. Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller;

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.040 General Requirements for Release Detection for All In-Use Underground Storage Tanks</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost



calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

## REVISED FISCAL NOTE PRIVATE COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.040 General Requirements for Release Detection for All In-Use Underground Storage Tanks</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA

determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.041 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1167-1168). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this Order of Rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were

made in response to this comment.

COMMENT #3: Ms. Eighmey provided a written comment suggesting removal of the terms “new or upgraded” from paragraph (1)(A)1. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. In response, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #4: Ms. Eighmey provided a written comment suggesting language changes to paragraph (1)(A)5., specifically suggesting removal or alternative language and noting a typo. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The department appreciates the comment and understands the concern. In response, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #5: Ms. Eighmey provided a written comment suggesting paragraph (1)(A)4. is unnecessary and should be deleted. She asserts that this language sets forth performance standards that need only be included in 10 CSR 26-2.043. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This rule sets forth what methods can be used and when. As such, this appears to be the appropriate place for this specific language as it details when this method is no longer approved for use. This language does not explain how groundwater monitoring is conducted, but simply defines when it is or is not allowed. As such, no change is made in response to this comment.

COMMENT #6: Ms. Eighmey provided a written comment suggesting paragraph (1)(A)6. is unnecessary and should be deleted. She asserts that this rule applies to all systems in-use, regardless of when they were installed. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This rule sets forth what tank monitoring methods can or must be used and when. As such, this is the appropriate place for this specific language as it details that a specific method is required for tank systems installed after July 1, 2017. To clarify, this rule makes new tanks subject to a very specific release detection method, specifically 10 CSR 26-2.043 subsection (1)(H), which is interstitial monitoring. This language does not explain how interstitial monitoring is conducted, but simply defines when it is or is not required. As such, the department believes that this is the most appropriate location for this language. As such, no change is made in response to this comment.

COMMENT #7: Ms. Eighmey provided a written comment suggesting subparagraph (1)(B)1.C. is unnecessary and should be deleted. She asserts that this rule applies to all systems in-use, regardless of when they were installed. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This rule sets forth what piping monitoring methods can or must be used and when. As such, this seems to be the appropriate place for this specific language as it details that a specific method is required for tank systems installed after July 1, 2017. To clarify, this rule makes new piping subject to a very specific release detection method, specifically 10 CSR 26-2.043 subsection (1)(H), which is interstitial monitoring. This language does not explain how interstitial monitoring is conducted, but simply defines when it is or is not required. As such, the department believes that this is the most

appropriate location for this language. As such, no change is made in response to this comment.

COMMENT #8: Ms. Eighmey provided a written comment suggesting paragraph (1)(B)4. is unnecessary and should be deleted. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: This rule sets forth what piping monitoring methods can be used and when. As such, this seems to be the appropriate place for this specific language as it details what methods are allowed for airport hydrant fuel distribution or field-constructed tank system piping and, if appropriate, any limitations on their use based on installation date. This language does not explain how those methods are conducted, but simply defines when and what is or is not allowed. As such, the department believes that this is the most appropriate location for this language. As such, no change is made in response to this comment.

COMMENT #9: Ms. Eighmey provided a written comment on rule 10 CSR 26-2.044 paragraphs (1)(C)2. and 3. suggesting the references to groundwater monitoring and vapor monitoring sunset dates are redundant and does not need to be included in 10 CSR 26-2.044. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: This language is included in 10 CSR 26-2.041, but only in the subsection that pertains to *tank* monitoring, subsection (1)(A). When writing these rules, it was awkward to put this same language into the *piping* monitoring options within 10 CSR 26-2.041 because there are multiple piping types covered in four (4) different paragraphs. In response to parts of this comment, the department notes that 10 CSR 26-2.041 is the appropriate rule to note when and where methods are allowed. As such, the text in 10 CSR 26-2.044 that establishes the sunset dates for groundwater and vapor monitoring would be better suited for 10 CSR 26-2.041, not 10 CSR 26-2.044. As such, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #10: Mr. Bob Wright, Wright’s Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or “grandfather” in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns raised in his comment.

RESPONSE: Mr. Wright indicated that having to change methods would be costly and a procedural change- something new to learn. EPA’s new federal rule includes significant changes to the groundwater monitoring method. In EPA’s version, sites would have to be able to provide extensive documentation of well installation, prove wells are installed properly (well logs) and in accordance with their guidance, the original site assessment documenting background levels prior to beginning the method, and more. Unfortunately, the department’s review of sites using groundwater monitoring did not find any site in Missouri that likely meet all of these federal requirements. If a site cannot document that they meet all of the federal requirements, under the new EPA regulations, a new well plan would be needed, likely new wells installed that can document proper installation, groundwater levels at the site over the year, and all of this must be signed by a registered geologist or a professional engineer, also an added cost. Furthermore, a new background site assessment would be needed. If contamination is found during that assessment, the finding of contamination must be reported as a suspected release, requiring action, and it is possible the method will not be allowed until the site has been adequately remediated. So, while the rules appear to be different, in application in Missouri, it appears that the effect in reality at the sites will be the same: the least costly and most practical option will be a change in methods. After discussing this

with Mr. Wright, he said he appreciated the explanation and had not understood the two (2) options- state or federal regulations. The department also explained that the timeline to comply with EPA's version was shorter. Since the state is establishing a "sunset date," EPA allowed the department to give an extended time for compliance with this version, as it appears, in writing if not in actual application, more stringent than the EPA requirement. Mr. Wright said that it sounds like he would be switching methods either way and he much preferred the longer timeframe the state option allows. As such, no change is made in response to this comment.

COMMENT #11: Mr. Landreth submitted comments on behalf of the STL Fuel Company LLC, which operates the fuel system at Lambert-St. Louis International Airport. Mr. Landreth's comment is on 10 CSR 26-2.041(1)(B)4.A. and indicates that the open reference back to subsection (1)(B) is wrong "as for airport hydrant fuel distribution systems it is the annual or biennial leak testing for pipelines." RESPONSE: 10 CSR 26-2.041(1)(B)4. outlines the options for compliance for airport hydrant fuel distribution system and field-constructed tank system piping. It allows these piping systems to be monitored in accordance with the standard piping monitoring options or the special piping monitoring options in 10 CSR 26-2.047. 10 CSR 26-2.047 outlines the special options for annual and biennial leak testing on piping. As such, both options are clearly available under this rule. As such, no change is proposed in response to this comment.

#### 10 CSR 26-2.041 Requirements for Petroleum Underground Storage Tank Systems

(1) Owners and operators of petroleum underground storage tanks (UST) systems that are in use must provide release detection for tanks and piping as follows:

(A) Tanks. Tanks must be monitored at least every thirty (30) days for releases using one (1) of the methods listed in 10 CSR 26-2.043(1)(B)-(I), except that—

1. UST systems that meet standards in 10 CSR 26-2.020 or 10 CSR 26-2.021 and the monthly inventory control requirements in 10 CSR 26-2.043(1)(A) may use tank tightness testing (10 CSR 26-2.043(1)(D)) at least every five (5) years until December 22, 1998, or until ten (10) years after the tank is installed or upgraded under 10 CSR 26-2.021(3), whichever is later;

2. Tanks with a capacity of two thousand (2,000) gallons or less may use manual tank gauging (10 CSR 26-2.043(1)(C));

3. Field-constructed tanks greater than fifty thousand (50,000) gallons may use the alternative release detection requirements in 10 CSR 26-2.046;

4. Groundwater monitoring (10 CSR 26-2.043 subsection (1)(G)) will no longer be valid to monitor for releases after July 1, 2020;

5. Vapor monitoring (10 CSR 26-2.043 subsection (1)(F)) may not be used after July 1, 2020, as a release detection method unless it is used with an added tracer chemical and listed by the National Work Group on Leak Detection Evaluations as a tank tightness test; and

6. Tanks installed after July 1, 2017, must be monitored for leaks at least every thirty (30) days in accordance with 10 CSR 26-2.043(1)(H);

(B) Piping. Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one (1) of the following requirements:

1. Pressurized piping. Underground piping that conveys regulated substances under pressure must—

A. Be equipped with an automatic line leak detector in 10 CSR 26-2.044(1)(A);

B. Have an annual line tightness test conducted in accordance with 10 CSR 26-2.044(1)(B) or have monthly monitoring conducted in accordance with 10 CSR 26-2.044(1)(C); and

C. New or replaced piping installed after July 1, 2017, must

be monitored for releases at least every thirty (30) days in accordance with 10 CSR 26-2.043 subsection (1)(H);

2. Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three (3) years and in accordance with 10 CSR 26-2.044(1)(B) or use a monthly monitoring method conducted in accordance with 10 CSR 26-2.044(1)(C). New or replaced piping installed after July 1, 2017, must be monitored for releases at least every thirty (30) days in accordance with 10 CSR 26-2.043 subsection (1)(H). No release detection is required for suction piping that is designed and constructed to meet the following standards:

A. The below-grade piping operates at less than atmospheric pressure;

B. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

C. Only one (1) check valve is included in each suction line;

D. The check valve is located directly below and as close as practical to the suction pump; and

E. A method is provided that allows compliance with subparagraphs (1)(B)2.A.-D. of this rule to be readily determined (for example, the check valve can be visually inspected); and

3. Gravity piping and remote fill piping are exempt from the piping line leak detection requirements in this section; and

4. Underground bulk piping associated with airport hydrant fuel distribution systems and field-constructed tanks must meet one (1) of the following release detection requirements:

A. The requirements in subsection (B) of this section; or

B. The alternative release detection requirements in 10 CSR 26-2.047;

C. Underground bulk piping installed after July 1, 2017, must meet the requirements in paragraph 1. or 2. of this subsection;

5. Except that—

A. Groundwater monitoring (10 CSR 26-2.043 subsection (1)(G)) will no longer be valid to monitor for releases after July 1, 2020; and

B. Vapor monitoring (10 CSR 26-2.043 subsection (1)(F)) may not be used after July 1, 2020, as a release detection method unless it is used with an added tracer chemical and listed by the National Work Group on Leak Detection Evaluations as a tightness test.

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.041 Requirements for Petroleum Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually -- \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>



### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra

documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will

continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

**REVISED FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.041 Requirements for Petroleum Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (c.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.042 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1168–1169). No changes were made to the text of this proposed amendment, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were

made in response to this comment.

**10 CSR 26-2.042 Requirements for Hazardous Substance Underground Storage Tank Systems**

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*



REVISED FISCAL NOTE  
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.042 Requirements for Hazardous Substance Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
Missouri Department of Natural Resources	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
Missouri Petroleum Storage Tank Insurance Fund (PSTIF)	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.042 Requirements for Hazardous Substance Underground Storage Tank Systems</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.043 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1169–1171). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address



concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey provided a written comment suggesting removal of the term “daily data” as it is not in the federal rule. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: This language, concerning the specific requirements for statistical inventory reconciliation, was created in the last amendment of the rule in 2011. Ms. Eighmey has noted a change, though, from the term supporting data to daily data. The department reference to daily data was an attempt to enhance clarity to confirm that each’s day’s supporting data in that list is required. The department appreciates the comment and will return to using the term originally in the rule. This data has been valuable in assessing the size of a release and confirming operational compliance with the statistical inventory reconciliation. In response to the first part of this comment, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #4: Ms. Eighmey provided a written comment indicating that the language in paragraph (1)(E)2. is confusing and offered alternative text. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: The first part of the language confusion that Ms. Eighmey noted was the term “system.” The department understands that confusion and will amend the language to state “automatic tank gauge system.” The next suggested language, though, is ambiguous as it indicates a test must meet... continuous in-tank leak detection operating on an uninterrupted basis... The ambiguity is that EPA’s federal language specifically defines that a test must be performed under certain operating conditions. Continuous monitoring is an operating condition, and is more than just criteria to be met. As such, the department has made changes in response to the first part of this comment in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

COMMENT #5: Ms. Eighmey provided a written comment noting that, in the interstitial monitoring subsection (1)(H), there is language involving piping monitoring and this rule only pertains to tank monitoring. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

COMMENT #6: Ms. Eighmey provided a written comment noting the use of the term UST systems in paragraphs (1)(H)2. and 3. and suggested changing it to tank only as this rule only pertains to tank monitoring. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE TO COMMENTS #5 AND #6: Ms. Eighmey is correct. This specific rule defines methods of monitoring for tanks and piping language is included in the proposed language. Unfortunately, the piping release detection rule specifically references some of the tank monitoring rules for details on how to comply with the method. Copying the language in its entirety for each of these methods into the piping release detection rule would create a long rule, with most of the language exactly the same. The piping release detection method specifically references this specific tank interstitial monitoring rule for details on how to conduct interstitial monitoring for piping. As there was only a short part that needed to be added for the piping, it seemed appropriate to add that language herein rather than copy all of the relevant tank release detection methods into the piping release detection rule. This cross-reference between the tank and piping release detection rules has been in place since EPA’s first UST regulations. As such, no change is made in response to this comment.

COMMENT #7: Ms. Eighmey provided a written comment noting that the word “and” should be deleted and a period inserted at the

end of paragraph (1)(H)3. A comment supporting all of Ms. Eighmey’s comments was submitted by Mr. Leone, commenter noted above.

RESPONSE: The secretary of state only prints the subsections that have changes. The rule still contains a subsection (I); therefore, the “;and” is the appropriate punctuation as the list continues on and ends with subsection (I). As such, no change is made in response to this comment.

COMMENT #8: Mr. Bob Wright, Wright’s Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or “grandfather” in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns he raised in his comment.

RESPONSE: Mr. Wright indicated that having to change methods would be costly and a procedural change- something new to learn. EPA’s new federal rule includes significant changes to the groundwater monitoring method. In EPA’s version, sites would have to be able to provide extensive documentation of well installation, proof wells are installed properly (well logs) and in accordance with their guidance, the original site assessment documenting background levels prior to beginning the method, and more. Unfortunately, the department’s review of sites using groundwater monitoring did not find any site in Missouri that likely meet all of these federal requirements. If a site cannot document that they meet all of the federal requirements, under the new EPA regulations, a new well plan would be needed, likely new wells installed that can document proper installation, groundwater levels at the site over the year, and all of this must be signed by a registered geologist or a professional engineer, also an added cost. Furthermore, a new background site assessment would be needed. If contamination is found during that assessment, the finding of contamination must be reported as a suspected release, requiring action; and it is possible the method will not be allowed until the site has been adequately remediated. So, while the rules appear to be different, in application in Missouri, it appears that the effect in reality at the sites will be the same: the least costly and most practical option will be a change in methods. After discussing this with Mr. Wright, he said he appreciated the explanation and had not understood the two (2) options- state or federal regulations. The department also explained that the timeline to comply with EPA’s version was shorter. Since the state is establishing a “sunset date,” EPA allowed the department to give an extended time for compliance with this version, as it appears, in writing if not in actual application, more stringent than the EPA requirement. Mr. Wright said that it sounds like he would be switching methods either way; and, he much preferred the longer timeframe the state option allows. As such, no change is made in response to this comment. Mr. Bob Wright, Wright’s Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or “grandfather” in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns he raised in his comment.

#### 10 CSR 26-2.043 Methods of Release Detection for Tanks

(1) Methods of release detection for underground storage tanks (USTs) used to meet the requirements in 10 CSR 26-2.041 must be conducted as follows:

(B) Statistical Inventory Reconciliation (SIR), which is a statistical inventory analysis method that tests for the loss of a regulated substance. SIR must meet the following requirements:

1. Report a quantitative result with a calculated leak rate;
2. Be able to detect a two-tenths (0.2) gallon-per-hour leak rate from any portion of the tank system that routinely contains a regulated substance;
3. Must be conducted for each independent tank system;

4. Be done in conjunction with inventory control that meets the requirements in 10 CSR 26-2.043(1)(A);

5. Use a threshold that does not exceed one-half (1/2) the minimum detectible leak rate;

6. Be conducted in accordance with the National Work Group on Leak Detection Evaluations listing and the manufacturer's requirements. To obtain copies of equipment listings, contact the National Work Group on Leak Detection Evaluations, [www.nwglde.org](http://www.nwglde.org); and

7. The SIR analysis report must include the supporting data, inventory measurements of the regulated substance and water, delivery data, and analysis or reporting date;

(E) Automatic Tank Gauging. Equipment for automatic tank gauging that tests for the loss of regulated substance and conducts inventory control must meet the following requirements:

1. The automatic regulated substance level monitor test can detect a two-tenths- (0.2-) gallon-per-hour leak rate from any portion of the tank that routinely contains a regulated substance;

2. The test must be performed with the automatic tank gauging system operating in one of the following modes:

A. In-tank static testing conducted at least once every thirty (30) days; or

B. Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty (30) days; and

3. Inventory control (or equivalent test) meeting the requirements in 10 CSR 26-2.043(1)(A) is conducted;

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	10 CSR 26-2.043 <i>Methods of Release Detection for Tanks</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new <u>federal</u> regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually – \$102,000 one-time for costs associated with implementing the new <u>federal</u> regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### **IV. ASSUMPTIONS**

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

**REVISED FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.043 Methods of Release Detection for Tanks</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

**III. WORKSHEET**

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.



3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.044 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1171-1172). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address

concerns prior to actual implementation. As such, no changes were made in response to this comment.

**COMMENT #3:** Ms. Eighmey provided a written comment suggesting the heading for subsection (1)(C) was inappropriate as this is the piping release detection rule. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** This subsection (1)(C) is entitled "Applicable Tank Methods" because it describes which of the tank methods, described in detail in 10 CSR 26-2.043, may be applicable for use in monitoring piping. This section specifically ties together release detection methods that may cover all of a UST system (e.g. statistical inventory reconciliation) or methods that can cover either a tank or piping system (e.g. interstitial monitoring). So as not to have to reprint all of that redundant language twice, the piping release detection rule simply details which methods, listed under the tank monitoring rule, can actually be used on piping as well. As such, the heading "Applicable Tank Methods," originally used in EPA's original UST rule, seems to still be appropriate. No change is made in response to this comment.

**COMMENT #4:** Ms. Eighmey provided a written comment suggesting a change in the text associated with the alternative piping release detection options for airport hydrant fuel distribution tank systems and field-constructed tank systems. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** Ms. Eighmey has pointed out a typo in the regulation language. The rule is supposed to apply to piping systems associated with airport hydrant systems or piping associated with field-constructed tanks, where the tank is larger than fifty thousand (50,000) gallons. We appreciate this catch, as the language in the proposed amendment does not currently meet the language in EPA's rule. The proposed language is not exactly in accordance with EPA's proposal, but is closer and draws attention to the problem. As such, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #5:** Ms. Eighmey provided a written comment on this rule, 10 CSR 26-2.044(1)(C)2. and 3., suggesting the references to groundwater monitoring and vapor monitoring sunset dates is redundant and does not need to be included here. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** This language is included in 10 CSR 26-2.041, but only in the subsection that pertains to *tank* monitoring, subsection (1)(A). When writing these rules, it was awkward to put this same language into the *piping* monitoring options within 10 CSR 26-2.041 because there are multiple piping types covered in four (4) different paragraphs. In response to this comment, the department notes that 10 CSR 26-2.041 seems to be the appropriate rule to note when and where methods are allowed. As such, the text in 10 CSR 26-2.044 that establishes the sunset dates for groundwater and vapor monitoring would be better suited for 10 CSR 26-2.041, not 10 CSR 26-2.044. As such, the department has made changes in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

**COMMENT #6:** Mr. Bob Wright, Wright's Station and Garage, submitted a comment on the language that would sunset groundwater monitoring as a release detection method. He requested the department withdraw this requirement or "grandfather" in his station. The department also had extensive verbal discussions with Mr. Wright to fully understand the concerns he raised in his comment.

**RESPONSE:** Mr. Wright indicated that having to change methods would be costly and a procedural change- something new to learn.

EPA's new federal rule includes significant changes to the groundwater monitoring method. In EPA's version, sites would have to be able to provide extensive documentation of well installation, proof wells are installed properly (well logs) and in accordance with their guidance, the original site assessment documenting background levels prior to beginning the method, and more. Unfortunately, the department's review of sites using groundwater monitoring did not find any site in Missouri that likely meet all of these federal requirements. If a site cannot document that they meet all of the federal requirements, under the new EPA regulations, a new well plan would be needed, likely new wells installed that can document proper installation, groundwater levels at the site over the year, and all of this must be signed by a registered geologist or a professional engineer, also an added cost. Furthermore, a new background site assessment would be needed. If contamination is found during that assessment, the finding of contamination must be reported as a suspected release, requiring action; and it is possible the method will not be allowed until the site has been adequately remediated. So, while the rules appear to be different, in application in Missouri, it appears that the effect in reality at the sites will be the same: the least costly and most practical option will be a change in methods. After discussing this with Mr. Wright, he said he appreciated the explanation and had not understood the two (2) options- state or federal regulations. The department also explained that the timeline to comply with EPA's version was shorter. Since the state is establishing a "sunset date," EPA allowed the department to give an extended time for compliance with this version, as it appears, in writing if not in actual application, more stringent than the EPA requirement. Mr. Wright said that it sounds like he would be switching methods either way; and, he much preferred the longer timeframe the state option allows. As such, no change is made in response to this comment.

#### 10 CSR 26-2.044 Methods of Release Detection for Piping

(1) Each method of release detection for piping used to meet the requirements of release detection for underground storage tanks (USTs) in 10 CSR 26-2.041 must be conducted in the following manner:

(C) Applicable Tank Methods. Any of the methods in 10 CSR 26-2.043(1)(B) and (F)-(I) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances except—

1. Owners and operators of piping associated with field-constructed tanks greater than fifty thousand (50,000) gallons or airport hydrant fuel distribution system tanks may comply with 10 CSR 26-2.074 in lieu of the methods of piping leak detection in this rule; and

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules*

*are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	10 CSR 26-2.044 Methods of Release Detection for Piping
Type of Rulemaking	Amendment

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### **IV. ASSUMPTIONS**

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.



REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.044 Methods of Release Detection for Piping</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

**III. WORKSHEET**

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby adopts a rule as follows:

10 CSR 26-2.046 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1172–1173), but there was a typo in the rule hearing and comment period dates provided in the announcement. As such, the typo was corrected and the rule was reprinted in the *Missouri Register* on October 3, 2016 (41 Mo Reg 1308). No changes were made to the text of this proposed rule, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this rule are described below, as well as any change made to the text of the proposed rule in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed rules, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation

of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until

January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on a broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

#### **10 CSR 26-2.046 Alternative Methods of Release Detection for Field-Constructed Tanks**

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a*

*per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.046 Alternative Methods of Release Detection for Field-Constructed Tanks</i>
Type of Rulemaking	<i>New Rule</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra

documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.



#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

**REVISED FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.046 Alternative Methods of Release Detection for Field-Constructed Tanks</i>
Type of Rulemaking	<i>New Rule</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note.

EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use.

Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby adopts a rule as follows:

10 CSR 26-2.047 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1173-1174), but there was a typo in the rule hearing and comment period dates provided in the announcement. As such, the typo was corrected and the rule was reprinted in the *Missouri Register* on October 3, 2016 (41 Mo Reg 1309). No changes were made in the proposed rule, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this rule are described below, as well as any change made to the text of the proposed rule in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed rules, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation

of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of

time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

#### **10 CSR 26-2.047 Alternative Methods of Release Detection for Bulk Underground Piping**

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assess-*

*ment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

REVISED FISCAL NOTE  
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.047 Alternative Methods of Release Detection for Bulk Underground Piping</i>
Type of Rulemaking	<i>New Rule</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra



documentation to review as part of the current records review process. With this part of an existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.047 Alternative Methods of Release Detection for Bulk Underground Piping</i>
Type of Rulemaking	<i>New Rule</i>

**II. SUMMARY OF FISCAL IMPACT**

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In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

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State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
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Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
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**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.048 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1172). No changes were made to the text of this proposed amendment, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject

to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** In her written comments, Ms. Eighmey suggested that this entire rule should be rescinded and combined with 10 CSR 26-2.034. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

**RESPONSE:** 10 CSR 26-2.034 is a list of records that must be retained, but many of the items on the list reference another rule, wherein the detailed recordkeeping requirements for that specific rule are found (e.g. the containment sump testing recordkeeping is detailed in 10 CSR 26-2.035 and 10 CSR 26-2.034 simply references the documentation required in 10 CSR 26-2.035.) As such, providing details on a recordkeeping requirement and simply having it referenced in 10 CSR 26-2.034 is consistent with many other rules. There are now seven (7) release detection rules; EPA's original format and the department's format for these rules has been to have the details in a separate rule specific to the release detection rule that covers all seven (7) release detection rules. This rule is referenced in 10 CSR 26-2.034. The format keeps the recordkeeping rules together with the appropriate requirement; for release detection, having a separate recordkeeping rule allows for these requirements to not enlarge the other rules and makes them easier to find. As such, no change is made in response to this comment.

**10 CSR 26-2.048 Release Detection Record Keeping**

**REVISED PUBLIC COST:** The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules

*amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.048 Release Detection Record Keeping</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>—</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>



### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

## REVISED FISCAL NOTE PRIVATE COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.048 Release Detection Record Keeping</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned – \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note.

EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under section 319.109, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1174). No changes were made to the text of this proposed amendment, but revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that failure to maintain SPA would result in regulated facilities being subject to the

EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were

made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

*package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

#### 10 CSR 26-2.050 Reporting of Suspected Releases

*REVISED PUBLIC COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost public entities two hundred fifteen thousand seven hundred fifty dollars and thirty-four cents (\$215,750.34) annually plus a one- (1-) time one hundred two thousand dollars (\$102,000) added cost to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule), including the cost incurred by state agencies to implement the requirements of all twenty-five (25) rules. A revised public entity fiscal note to reflect the overall cost to publicly-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule*



REVISED FISCAL NOTE  
PUBLIC COST

I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.050 Reporting of Suspected Releases</i>
Type of Rulemaking	<i>Amendment</i>

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garage/Service Centers</li> <li>• Government facilities</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned \$195,624 annually</p>
<ul style="list-style-type: none"> <li>• Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>• Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually • \$102,000 one-time for costs associated with implementing the new federal regulations
<b>Total annual public cost:</b>		<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### **IV. ASSUMPTIONS**

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost

calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.

2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

REVISED FISCAL NOTE  
PRIVATE COST

**I. RULE NUMBER**

Rule Number and Name	<i>10 CSR 26-2.050 Reporting of Suspected Releases</i>
Type of Rulemaking	<i>Amendment</i>

**II. SUMMARY OF FISCAL IMPACT**

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned – \$2,249,676 annually</p>

**III. WORKSHEET**

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 26—Petroleum and Hazardous Substance**  
**Storage Tanks**  
**Chapter 2—Underground Storage Tanks—Technical**  
**Regulations**

**ORDER OF RULEMAKING**

By the authority vested in the Hazardous Waste Management Commission under sections 319.105, 319.107, 319.109, and 319.137, RSMo 2016, the commission hereby amends a rule as follows:

10 CSR 26-2.052 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2016 (41 MoReg 1174–1175). Those sections with changes are reprinted here and revised public entity and private entity cost statements are reprinted below, which provide information on the revised fiscal notes that are included with the order of rulemaking. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations* (CSR).

**SUMMARY OF COMMENTS:** A public hearing was held October 20, 2016, and the public comment period ended October 27, 2016. At the public hearing, the Department of Natural Resources testified that the twenty-three (23) amendments proposed to Title 10, Division 26 of the *Code of State Regulations* would make the changes to Missouri underground storage tank (UST) regulations, which would update Missouri's rules to incorporate the federal UST regulations that were published in July 2015 and became effective October 13, 2015. These rule changes also would make additional changes to the Missouri regulations that were determined to be needed at this time, typically associated with the new federal requirements.

Ms. Carol Eighmey, Executive Director of the Missouri Petroleum Storage Tank Insurance Fund (PSTIF), testified at the public hearing and submitted written comments.

In addition to Ms. Eighmey's comments, the department received written comments on the proposed amendments and additions from Mr. Ron Leone, Executive Director of the Missouri Petroleum Marketers and Convenience Store Association (MPCA), Mr. Donnie Greenwalt, on behalf of Wallis Companies, Mr. Bob Wright, owner of Wright's Station and Garage, and Mr. Lloyd Landreth, representing the St. Louis Fuel Company LLC (affiliated with Lambert-St. Louis International Airport).

The department received the following testimony or comments on the changes proposed to this rule. All comments relating to this amendment are described below, as well as any change made to the text of the proposed amendment in response to the testimony or comment.

**COMMENT #1:** Ms. Eighmey testified and stated in her written comments (PSTIF comment #4) that "no fiscal notes were published for most of the rules;" and references the statutory requirement that a fiscal assessment be performed on any new rules. She also noted that the Petroleum Storage Tank Insurance Fund's costs were not published as part of the fiscal assessment. Similar comments were also submitted by Mr. Leone, Mr. Greenwalt, and Mr. Landreth, commenters noted above.

**RESPONSE AND EXPLANATION OF CHANGE:** The comment specifically refers to the fiscal assessment of the new federal requirements. Please note, should Missouri fail to promulgate these proposed amendments, the Environmental Protection Agency (EPA) has advised it would withdraw our State Program Approval (SPA). With SPA in place, EPA allows states to implement state rules in lieu of the federal rules. In other words, Missouri was allowed to delay implementation of the EPA rules. It is key to note, though, that fail-

ure to maintain SPA would result in regulated facilities being subject to the EPA rules as written, with compliance dates as written. They do not consider this to be retroactive application of the rules, because they are subject to these federal rules upon promulgation.

Regardless, a federal fiscal assessment was conducted on the cost of rule implementation, which therefore includes costs to implement the rule in Missouri. The *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions To EPA's Underground Storage Tank Regulations* was published in April 2015. Please note, EPA's rule was published shortly thereafter, and neither the rule nor the associated April 2015 fiscal assessment was challenged. This assessment includes detailed cost for the new equipment testing requirements, newly-regulated/ previously deferred tank systems, and state costs as well.

In response to this comment and after discussion of the statutory requirements for the preparation of fiscal notes in Chapter 536 of the Revised Statutes of Missouri and how those requirements apply to the adoption of federal rules, department staff determined that it was prudent to prepare a fiscal note for each proposed amendment of the Missouri rules using the cost information gathered in EPA's fiscal assessment. That assessment comes up with an annual cost of seven hundred fifteen dollars (\$715) per facility to comply with all of the new and revised requirements in the federal rule published on July 15, 2015. Department staff used the per facility cost to determine an estimated annual cost for all Missouri UST facilities affected by the EPA rule, represented as a percentage of the total number of affected facilities nationwide. The fiscal assessment did not break those costs down in a way that makes it possible to prepare a rule-specific fiscal note for each rule, and therefore the fiscal note for each rule is only an estimate of the total cost of all of the requirements in the federal rule, rather than an estimate of the specific costs that could be attributed to each Missouri rule. The department prepared a revised fiscal note for each rule that reflects the overall compliance costs and the revised fiscal note is included with this order of rulemaking.

**COMMENT #2:** Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #3) concerns about the new testing requirements. Specifically, she indicated a lack of flexibility in the rules pertaining to the new requirements. She also requested postponement of the rules until alternatives can be found. Additional similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

**RESPONSE:** The "new" requirements noted in this comment are the new EPA rules. In her comments, Ms. Eighmey indicated that "states are not required to implement EPA's rules verbatim, and EPA specifically allows more flexibility in the UST program than in its other regulatory programs." Ms. Eighmey is correct that, in some areas, the state is allowed to be more flexible in our regulations, upon approval from EPA. This flexibility though is limited by the federal SPA regulations and is contingent upon EPA approval.

In the area of equipment testing, though, the department has already asked EPA (both headquarters and Region 7) to allow some flexibility in these rules. That request was denied. Should we not establish the regulatory authority included in the federal regulations, our rules would be less stringent than EPA's and would not be approved. Please note, where we can provide flexibility in the *implementation* of these rules, we will do so. But, per EPA, the rules must include the federal rule language, as specifically noted in response to our request for flexibility and alternative language.

More time or postponing the regulation would not change EPA's answer on either the allowable rule languages or the timeline for compliance approved in Missouri's proposed regulation. In short, postponement would do nothing except potentially compromise EPA's assessment of our compliance with the current compliance plan for Missouri's SPA and federal funding. It is important to note, though, that most of the equipment testing requirements are not due until January 1, 2020, for existing sites. There is an extensive period of



time to review testing options, implementation policies, and address concerns prior to actual implementation. As such, no changes were made in response to this comment.

COMMENT #3: Ms. Eighmey testified and provided in her written comments (PSTIF letter comment #5) concerns about the department's response to equipment that fails the new testing requirements. She indicated that "no information has been provided indicating what the department's response will be when equipment that has never had to be tested before fails a test." Additional, similar comments were also submitted by Mr. Leone and Mr. Greenwalt, commenters noted above.

RESPONSE: This question arose not only in the public meeting held by DNR on July 21, 2016, but was also raised other outreach meetings the department has held or participated in across the state. The answer has been the same, and can be put into a guidance document prior to implementation. While the testing requirement is new (e.g. testing a spill basin or overfill device), *finding* these devices non-functional or damaged is not new. Responding to broken and leaking spill basins is not new for the department. Broken, damaged, or leaking spill basins are typically one (1) of, if not the, most commonly cited serious violation during inspections. These broken, damaged, or leaking spill basins found during inspection would be the same ones, the same types of issues, that a spill basin test would find. In the state fiscal year 2016 inspection cycle, this issue was noted at eighty-three (83) sites, approximately ten percent (10%) of the sites inspected. As discussed during the outreach meetings, the department has dealt with this issue for years and does not handle broken spill basins, overfill devices, or even containment sumps, as suspected releases without other compounding, suspected release issues also found. For example, if an inspector finds product in a well (already a suspected release) and the owner notes that they think the product came from the broken spill bucket also noted during the inspection, then, yes, the department would require an appropriate suspected release response at that time. If an inspector finds a leak with product under a dispenser and notes that the containment sump is broken and not "containing" the fuel, then yes, the department might require an appropriate suspected release response. In both of these scenarios, though, the response was tied to the other suspected release finding and was not based on the broken equipment finding alone. The department has not, nor does it intend to, require site assessments, site checks, or sampling based on the finding of broken equipment/failed equipment tests alone. As such, no change is proposed in response to this comment.

COMMENT #4: Ms. Eighmey provided a written comment suggesting changes to the language in paragraph (1)(A)1. A comment supporting all of Ms. Eighmey's comments was submitted by Mr. Leone, commenter noted above.

RESPONSE AND EXPLANATION OF CHANGE: Ms. Eighmey's comment indicated that corrective action was already covered under the site check in subsection (1)(B) and, as such, did not need to be included in the system check language in subsection (1)(A). The department has made changes in response to this comment in the text of the order of rulemaking. The revised text is reprinted below as it will be published in the *Code of State Regulations*.

#### 10 CSR 26-2.052 Release Investigation and Confirmation Steps

(1) Unless corrective action is initiated in accordance with 10 CSR 26-2.070–10 CSR 26-2.083, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 10 CSR 26-2.050 within seven (7) days or another reasonable time period specified by the department using either the following steps or another procedure approved by the department:

(A) System Test. Owners and operators must conduct tests appropriate for the suspected release, using tightness tests listed by the National Work Group on Leak Detection Evaluations and/or approved by the department, or for containment sumps, a test method included in 10 CSR 26-2.035, to determine whether a leak exists in that portion of the tank system that routinely contains a regulated substance or a breach of the interstitial space has occurred. To obtain copies of equipment listings, contact the National Work Group on Leak Detection Evaluations, [www.nwglde.org](http://www.nwglde.org).

1. If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade, or close the underground storage tank (UST) system. Owners and operators must conduct a site check and comply with subsection (1)(B) if the test results for the system, tank, or delivery piping indicate that a release has occurred.

2. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

3. Owners and operators must conduct a site check as described in subsection (1)(B) of this rule if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release; or

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*REVISED PRIVATE COST: The changes to the federal rule resulted in increased costs for UST facilities in Missouri. The Environmental Protection Agency prepared a fiscal assessment that estimated these costs on a per facility basis nationwide. Based on this fiscal assessment, the federal requirements being adopted into Missouri's rules are expected to cost private entities \$2,249,676 total annually to comply with all twenty-five (25) rules amended and added in this rule package (not divided per rule). A revised private entity fiscal note to reflect the overall cost to privately-owned Missouri facilities to comply with the federal rules has been filed with the secretary of state along with this order of rulemaking.*

## REVISED FISCAL NOTE PUBLIC COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.052 Release Investigation and Confirmation Steps</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>Convenience Stores/Gas Stations</li> <li>Garage/Service Centers</li> <li>Government facilities</li> <li>Fleet/shipping/trucking facilities</li> <li>Hospitals, Nursing or Health Care facilities</li> <li>Communication facilities and structures</li> <li>Banks</li> <li>Food storage facilities</li> <li>Data storage facilities</li> <li>Other owners/operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with <u>all</u> of the new, federal regulations</p> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 8% publically owned = \$195,624 annually</p>
<ul style="list-style-type: none"> <li>Missouri Department of Natural Resources</li> </ul>	The Department of Natural Resources staff review compliance documents for these UST facilities	Estimated \$1,621.44 annually additional costs associated with the new federal regulations
<ul style="list-style-type: none"> <li>Missouri Petroleum Storage Tank Insurance Fund (PSTIF)</li> </ul>	PSTIF also reviews compliance documents for these UST facilities	Estimated \$18,504.90 annually + \$102,000 one-time for costs associated with implementing the new federal regulations
	<b>Total annual public cost:</b>	<b>\$215,750.34/year + one-time \$102,000 added cost</b>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

The additional costs to the state for implementation were calculated based upon the Missouri Department of Natural Resource's expected additional costs. The Missouri Petroleum Storage Tank Insurance Fund (PSTIF) was asked to provide their expected costs as well. For the department's costs, the department assumed that the new federal requirements would add approximately three (3) extra hours per week of documentation review. The new equipment test and inspections should require only simple documentation. Some of the tests or inspections are only required every three (3) years, but some are required annually. The department reviews this documentation in conjunction with the triennial UST facility inspections. As the department already requests the facility's compliance documentation, these test reports will simply be extra documentation to review as part of the current records review process. With this part of an

existing process, and with the reports for these new requirements expected to be relatively simple and short, the department anticipates no more than an additional three (3) hours per month to review this documentation. These new federal requirements do not change the actual inspection in the field. Furthermore, the one facility that would require additional inspections and time is the airport hydrant fuel distribution system that will no longer be deferred in Missouri. The facility, though, has stated their intention to close the USTs prior to the first inspection being warranted. As such, the department did not include inspections of this facility in this cost estimate.

The cost for three (3) hours per month of additional work, for the purposes of this fiscal note, is based on using an Environmental Specialist IV to conduct the review. Please note, many reviews are conducted by Environmental Specialists I, II or IIIs, and as such, using the Environmental Specialist IV costs should provide the highest estimated cost. The cost is based on an annual salary of \$49,116, with 2080 hours per year. This annual cost equates to approximately \$23.61 per hour. To calculate the full cost, though, the department must also include the cost of the fringe (average 47%) and indirect (average 29.76%) costs of the employee to the state, which comes to \$45.04 per hour. As such, the cost for three (3) additional hours per month is \$135.12, which is \$1621.44 annually.

PSTIF indicated that implementing all of the new federal regulations would require updates to their software program, the UST Operator Training program and edits and printing of updated, new forms. PSTIF provided an expected one time cost for these changes at approximately \$102,000: ~\$75,000 for our underwriting software, \$20,000 to modify the UST Operator Training courses, and \$6-8,000 to reprint applications and accompanying informational materials. In addition, PSTIF staff review compliances records as well. The new federal rules include a number of new testing, inspection and monitoring requirements, with associated new recordkeeping requirements. The department estimated that the additional record review for department staff would be an additional 3 hours per month, but the department only reviews records every three (3) years, not annually like PSTIF, and only for approximately 22% of the in-use facilities. As such, we assumed that their increase would equivalent to three times as many reviews (they review every site annually- we review approximately 1/3 of the sites each year) and then adjusted that to increase the value to 78% of all sites, which gives us a monthly increase of 21.27 hours. According to the current contract for the underwriting services PSTIF uses, the hourly special project technical personnel services cost is \$72.50. As this was the only hourly cost related to this matter, we are using that as the basis for the final calculation. An additional 21.27 hours x \$72.50 equals \$1,542.08/monthly or \$18,504.90/annually.

This fiscal assessment did not include additional costs for filing, records retention, receipt of the mail, or other costs for processing this additional documentation, because it is assumed that it will be submitted with other documentation already required during the records review process, which is already a currently implemented process.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the “annual” cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.
3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA’s fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.
6. The state agency implementation costs used the assumption that the Environmental Specialist IV costs would be the highest, and therefore the most conservative number for the fiscal note. As such, this fiscal note does not attempt to include any routine cost of living raises, as the annual personnel cost is using the highest salary already; the cost of living calculation increase is offset by the reduction the department could have calculated using a lower-salaried position. These costs also assume that any facility providing the newly required documentation would have already regularly been providing compliance documentation upon request.

## REVISED FISCAL NOTE PRIVATE COST

### I. RULE NUMBER

Rule Number and Name	<i>10 CSR 26-2.052 Release Investigation and Confirmation Steps</i>
Type of Rulemaking	<i>Amendment</i>

### II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
<ul style="list-style-type: none"> <li>• Convenience Stores/Gas Stations</li> <li>• Garages/ Service Centers</li> <li>• Government facilities: fuel dispensing, generator fuel storage</li> <li>• Fleet/shipping/trucking facilities</li> <li>• Hospitals, Nursing or Health Care facilities</li> <li>• Communication facilities and structures (e.g. cellular phone companies)</li> <li>• Banks</li> <li>• Food storage facilities</li> <li>• Data storage facilities</li> <li>• Other owners and operators of underground storage tank systems</li> </ul>	<p>There are approximately 3,420 underground storage tank facilities</p> <p>We estimate that 92% of those facilities are owned by private entities</p> <p>We estimate that 8% are owned by public entities: federal, state or local governments</p>	<p>\$715 annually per facility for compliance with all of the new, federal regulations</p> <hr/> <p>Combined annual rule total \$715 per facility x 3,420 facilities x 92% privately owned = \$2,249,676 annually</p>

### III. WORKSHEET

In this fiscal note, we are calculating the cost for compliance with 25 new and amended underground storage tank (UST) rules: 10 CSR 26-2.010 through 10 CSR 26-2.052. EPA determined that the cost to comply with all corresponding federal regulations, which are included

in these new and amended state rules, is \$715 per facility annually. As of October 31, 2016, Missouri has 3,420 UST facilities with at least one tank. As that number is steadily, but slowly, declining, we believe using this number of facilities as the annual number of facilities as an estimate for the future number of facilities is valid, and perhaps even overestimates the cost.

Please note, these costs are all ones that were calculated, estimated and provided by EPA in the *Assessment of The Potential Costs, Benefits, And Other Impacts of the Final Revisions to EPA's Underground Storage Tank Regulations*. Any additional costs above and beyond those required by these new EPA rules are reflected in a separate line calculation within this fiscal note. EPA's calculated costs address owner/operator costs to comply with the new requirements. That does not mean that EPA's calculations address every cost potentially immediately associated with the new requirements. For example, EPA's calculations address the cost of "testing" the new spill basin, because that is a new requirement. These calculations do not address the cost to break concrete and replace the spill basin, since regulations already require broken spill basins to be repaired or replaced. As such, no matter how the damage or failing spill basin was discovered, the cost to replace it is already part of the current requirements. The new requirement simply adds another place where non-compliance with the existing rule (spill basin must prevent spills to the environment) might be found and this type of work (e.g. spill basin replacement) would be required. But the work itself is not a new requirement. Furthermore, almost all, if not all, facilities already require regular contractor visits to comply with existing regulations. The cost for these new tests and other requirements may assume that the contractor is already on-site conducting other, previously required tests and/or is already on-site conducting the many new tests or inspections required by this package of rule amendments and additions.

State-specific versions of many of the rules provide options lacking in the federal version of the rules. Complying with Missouri's adoption of the federal rules may often cost less than the corresponding federal requirements. Failure to implement the state versions would lead to higher costs for many sites and many owner/operators (but that "higher" cost is the value provided in the federal calculation used herein.) In the rare instances where Missouri's amendments are more stringent than the federal rule or have costs beyond the original federal requirements, those costs are provided in this amended fiscal note.

#### IV. ASSUMPTIONS

1. As of October 31, 2016, the number of UST facilities with at least one tank not yet permanently closed is 3,420 facilities. The department assumes that this number will continue to decrease slowly, as it has done for many years. For the "annual" cost calculation, though, we assumed a steady number of facilities, which should be a conservative estimate.
2. The number of facilities provided includes sites that have all tanks out-of-use. As of October 31, 2016, 250 facilities out of the 3,420 facilities referenced have all of the tanks out-of-use. Most of these new requirements apply only to tanks that are in-use. Theoretically, any of the out-of-use facilities could re-open. Many do not, but for the purposes of these calculations, we included all of these facilities. As such, again, this number of facilities is a conservative number.

3. The number of publically owned and privately owned facilities was reviewed, based on data available November 2016. Publically owned facilities include sites owned by the federal government, state government, and county or city governments. The calculated percentage of sites owned by government owners was approximately 8%. As this is simply a percentage, and we are aware of no reason that the number of these owners should dramatically change, we assumed a constant ownership of facilities to be approximately 92% private entities.
4. EPA is required to provide a fiscal assessment for any rule amendments or additions, at least as stringent as the state requirement for fiscal assessments. This fiscal note assumes EPA's fiscal assessment and cost estimates are reasonable.
5. EPA also calculated potential savings in their final assessment. These savings, for both public and private entities, include the reduced number of leaks, earlier detection resulting in smaller leaks, which should result in lower release investigation and response activity-related costs. The EPA included other potential savings in their assessment as well. For the purposes of this fiscal note, those savings are only mentioned here, but are not included in the calculated cost above.



**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 30—Child Support Enforcement  
Chapter 1—Organization**

**ORDER OF RULEMAKING**

By the authority vested in the Family Support Division under section 454.400, RSMo 2016, the director rescinds a rule as follows:

**13 CSR 30-1.010 Organization and Operation is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on November 1, 2016 (41 MoReg 1544). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 30—Child Support Enforcement  
Chapter 2—Performance Measures**

**ORDER OF RULEMAKING**

By the authority vested in the Family Support Division under section 454.400, RSMo 2016, the director rescinds a rule as follows:

**13 CSR 30-2.020 Financial Performance Measures for Counties Under Contract With the Missouri Division of Child Support Enforcement for the Provision of Total Child Support Services in Local Jurisdictions (Level A Counties) is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on November 1, 2016 (41 MoReg 1544–1545). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 40—Family Support Division  
Chapter 1—Organization**

**ORDER OF RULEMAKING**

By the authority vested in the Family Support Division under section 454.400, RSMo 2016, the director amends a rule as follows:

**13 CSR 40-1.010 Organization is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2016 (41 MoReg 1545–1546). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—MO Healthnet Division  
Chapter 3—Conditions of Provider Participation,  
Reimbursement and Procedure of General  
Applicability**

**ORDER OF RULEMAKING**

By the authority vested in the Department of Social Services under sections 208.153, 208.201, and 660.017, RSMo 2016, the director amends a rule as follows:

**13 CSR 70-3.030 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2016 (41 MoReg 1557–1558). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Missouri Medicaid Audit and Compliance (MMAC), a unit within the Department of Social Services (DSS), received five (5) comments on the proposed amendment.

COMMENTS #1 and #2: Missouri Alliance for HOME CARE and Missouri Health Care Association expressed concern with the change to subsection (5)(B) whereby sanctions involving the collection, recoupment, or withholding of MO HealthNet payments become effective ten (10) days from the date of mailing or delivery, whichever occurs first. Both commenters were concerned with the department's mail room and perceived delays therein. Missouri Alliance for HOME CARE was further troubled by what it felt was an inconsistency within the department due to the Family Support Division (FSD) considering increasing its notice periods due to delays in the FSD's benefit recipients receiving correspondence from FSD. Both commenters were particularly concerned with notices being mailed on Friday.

RESPONSE: With regard to the issue of sending notices on a Friday, we do not, and will not begin to, mail notices of sanctions on Fridays. No changes have been made to the rule as a result of these comments.

COMMENTS #3 and #4: Missouri Alliance for HOME CARE and Missouri Health Care Association were troubled by the removal from subsection (5)(B) of the necessity for the date of delivery of a notice to be determined by a signed receipt of delivery. Both entities expressed concern that this change would require a provider to retain the envelope in which the notice was received.

RESPONSE: MMAC would note that this change does not mean that MMAC will discontinue use of certified mail and the corresponding signed receipts of delivery. To clarify, MMAC is simply adding an option for delivery by first class mail to deal with situations where a provider refuses to accept delivery of certified mail. With respect to providers concerned about retaining envelopes in which notice is delivered, MMAC would point out that envelopes are not bulky and could easily be scanned into a computer if the provider deemed it too cumbersome. No changes have been made to the rule as a result of these comments.

COMMENT #5: In reviewing this proposed amendment, the department noted that an additional citation for its statutory authority to promulgate the amendment could have been included in the "AUTHORITY" section following the regulation.

RESPONSE AND EXPLANATION OF CHANGE: The department has modified the "AUTHORITY" section of the amendment.

**13 CSR 70-3.030 Sanctions for False or Fraudulent Claims for MO HealthNet Services**

*AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo 2016. This rule was previously filed as 13 CSR 40-81.160. Original rule filed Sept. 22, 1979, effective Feb. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2016.*

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION  
Division 2120—State Board of Embalmers and Funeral  
Directors  
Chapter 2—General Rules**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Embalmers and Funeral Directors under sections 333.111.1 and 333.340, RSMo 2016, the board amends a rule as follows:

**20 CSR 2120-2.100 Fees is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2016 (41 MoReg 1911–1914). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.010 Definitions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1816–1818). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.020 General Membership Provisions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1818–1819). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director adopts a rule as follows:

**22 CSR 10-2.025 Rule for Participating Higher Education Entity  
Entry into the Missouri Consolidated Health Care Plan  
is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1819–1820). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.030 Contributions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1820). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.051 PPO 300 Plan Benefit Provisions and Covered Charges is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1820). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.052 PPO 600 Plan Benefit Provisions and Covered Charges is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1821). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their

education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under sections 103.059 and 103.080.3, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.053 Health Savings Account Plan Benefit Provisions and Covered Charges is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1821–1822). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.055 Medical Plan Benefit Provisions and Covered Charges is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1823–1831). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication

in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under sections 103.059 and 103.080.3, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.060** PPO 300 Plan, PPO 600 Plan, and Health Savings Account Plan Limitations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1831–1833). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under sections 103.059 and 103.089, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.089** Pharmacy Employer Group Waiver Plan for Medicare Primary Members **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1833–1834). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.090** Pharmacy Benefit Summary **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1834–1836). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under sections 103.059 and 103.078, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-2.110** General Foster Parent Membership Provisions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1836). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 2—State Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director rescinds a rule as follows:

**22 CSR 10-2.150** Disease Management Services Provisions and Limitations **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1836–1837). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.010 Definitions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1837–1839). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.020 General Membership Provisions is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1839). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.053 PPO 1000 Plan Benefit Provisions and Covered Charges is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1839–1840). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under sections 103.059 and 103.080.3, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.055 Health Savings Account Plan Benefit Provisions and Covered Charges is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1840–1841). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.056 PPO 600 Plan Benefit Provisions and Covered Charges is amended.**

A notice of proposed rulemaking containing the text of the proposed

amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1841). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.057** Medical Plan Benefit Provisions and Covered Charges **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1841–1850). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Consolidated Health Care Plan received one (1) comment on the proposed amendment.

COMMENT #1: Judy Stone, with the Board for Certification of Nutrition Specialists, commented that a more general description of providers who may provide Diabetes Education should be included by changing the words “a Certified Diabetes Educator” to “a professional who provides diabetes education services, consistent with their education and training.”

RESPONSE: No changes have been made as a result of this comment. MCHCP will continue to require Diabetes Education to be delivered by a Certified Diabetes Educator based on the ten (10) guiding principles of the National Standards for Diabetes Self-Management Education (NSDSME). These standards were established to ensure quality diabetes self-management education that is evidence-based.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.060** PPO 600 Plan, PPO 1000 Plan, and Health Savings Account Plan Limitations **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1851–1852). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director amends a rule as follows:

**22 CSR 10-3.090** Pharmacy Benefit Summary **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1852–1854). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2016, the executive director rescinds a rule as follows:

**22 CSR 10-3.150** Disease Management Services Provisions and Limitations **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 1, 2016 (41 MoReg 1854). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**T**he Secretary of State is required by sections 347.141 and 359.481, RSMo 2000, to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript by email to [dissolutions@sos.mo.gov](mailto:dissolutions@sos.mo.gov).

## NOTICE

Notice is hereby given that 1219- 1221 West 41<sup>st</sup> St., LLC, a Missouri limited liability company, duly organized by the Missouri Secretary of State on January 28, 2015 (the "Company"), has filed with the Missouri Secretary of State Notice of Winding Up and Articles of Termination for Limited Liability Company effective as of the 24<sup>th</sup> day of February, 2017. Any person, persons, corporation or other business entities having claims against the Company must file the same by stating: a) name; b) address; c) current phone number; d) basis of the claim; and e) documentation of the claim within three (3) years from the date of this Notice. The information must be mailed to Julie Anderson, 3740 Broadway, 2<sup>nd</sup> Floor, Kansas City, Missouri 64111.

Any claim against the Company will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this Notice.

1219- 1221 West 41<sup>st</sup> St., LLC

## NOTICE OF WINDING UP OF LIMITED LIABILITY COMPANY

To: All creditors of and claimants against Ross Computer Maintenance LLC, a Missouri limited liability company, ("Company") .

On **February 14, 2017**, Ross Computer Maintenance LLC, Charter Number **LC1248967**, filed its notice of winding up with the Missouri Secretary of State.

Said limited liability company requests that all persons and organizations who have claims against it present them immediately by letter to the Company c/o Nancy E. Blackwell, Attorney at Law, Chinnery Evans & Nail, P.C., 800 NE Vanderbilt Lane, Lee's Summit, Missouri 64064.

All claims must include the following information:

1. Name and current address of the claimant.
2. The amount claimed.
3. The clear and concise statement of the facts supporting the claim.
4. The date the claim was incurred.

NOTICE: CLAIMS AGAINST ROSS COMPUTER MAINTENANCE LLC  
WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE  
THE CLAIM IS COMMENCED WITHIN THREE YEARS AFTER  
THE PUBLICATION OF THIS NOTICE.

**NOTICE OF DISSOLUTION  
TO ALL CREDITORS OF  
AND CLAIMANTS AGAINST  
MVM WOODFIELD PARK FUND, INC.**

MVM WOODFIELD PARK FUND, INC., a Missouri corporation, filed its Articles of Dissolution by Voluntary Action with the Missouri Secretary of State on February 9, 2017. Any and all claims against MVM WOODFIELD PARK FUND, INC. may be sent to Jonathan Goldstein, Advantage Capital, 190 Carondelet Plaza, Suite 1500, St. Louis, MO 63105. Each claim should include the following information: the name, address and telephone number of the claimant; the amount of the claim; the basis of the claim and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against MVM WOODFIELD PARK FUND, INC. will be barred unless a proceeding to enforce such claim is commenced within two (2) years after the date of this notice is published.

**NOTICE OF WINDING UP TO ALL CREDITORS OF AND CLAIMANTS AGAINST LAW  
OFFICES OF THOMAS J. NIEMANN, LLC.**

On March 2, 2017, Law Offices of Thomas J. Niemann, LLC, a Missouri limited liability company, filed its notice of winding up with the Missouri Secretary of State.

Dissolution was effective on March 2, 2017.

Said limited liability company requests that all persons and organizations with claims against it present them immediately by letter to Missouri Business Services, Inc., 9666 Olive Blvd., Ste. 690, St. Louis, MO 63132.

All claims must include: the name and address of the claimant; the amount claimed; the basis for the claim; and the date(s) on which the event(s) on which the claim is based occurred.

NOTICE: Because of the dissolution of Law Offices of Thomas J. Niemann, LLC, any claims against it will be barred unless proceeding to enforce the claim is commenced within three years after the publication date of the notice authorized by statute.

**NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY  
TO ALL CREDITORS AND CLAIMANTS AGAINST  
HAMMERMILL OWNER, LLC**

Hammermill Owner, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on March 3, 2017. Any and all claims against Hammermill Owner, LLC may be sent to Brian J. Beck, 7733 Forsyth Blvd., Suite 400, Clayton, MO 63105. Each claim should include the following information: the name, address and telephone number of the claimant; the amount of the claim; the basis of the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Hammermill Owner, LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.



**NOTICE OF WINDING UP FOR LIMITED LIABILITY COMPANY  
TO ALL CREDITORS AND CLAIMANTS AGAINST  
R/TK HAMMERMILL, LLC**

R/TK Hammermill, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on March 3, 2017. Any and all claims against R/TK Hammermill, LLC may be sent to Brian J. Beck, 7733 Forsyth Blvd., Suite 400, Clayton, MO 63105. Each claim should include the following information: the name, address and telephone number of the claimant; the amount of the claim; the basis of the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against R/TK Hammermill, LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

**NOTICE OF WINDING UP  
TO ALL CREDITORS AND CLAIMANTS AGAINST  
HAMMERMILL DEVELOPER, LLC**

Hammermill Developer, LLC, a Missouri limited liability company, filed its Notice of Winding Up for Limited Liability Company with the Missouri Secretary of State on March 3, 2017. Any and all claims against Hammermill Developer, LLC may be sent to Brian J. Beck, 7733 Forsyth Blvd., Suite 400, Clayton, MO 63105. Each claim should include the following information: the name, address and telephone number of the claimant; the amount of the claim; the basis of the claim; and the date(s) on which the event(s) on which the claim is based occurred.

Any and all claims against Hammermill Developer, LLC will be barred unless a proceeding to enforce such claim is commenced within three (3) years after the date this notice is published.

**NOTICE OF DISSOLUTION TO ALL CREDITORS AND CLAIMANTS  
AGAINST HEALTHCARE PROFESSIONAL EQUIPMENT SERVICES LLC**

Healthcare Professional Equipment Services LLC, a Missouri limited liability company (the "Company"), filed its Notice of Winding Up for a Limited Liability Company with the Missouri Secretary of State, effective on March 1, 2017. Any and all claims against the Company may be sent to Spenserv, Inc., 1000 Walnut Street, Suite 1400, Kansas City, Missouri, 64106. Each claim should include the following information: the name, address and telephone number of the claimant; the amount claimed; the date on which the claim arose; the basis for the claim and documentation for the claim. Any and all claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

**NOTICE OF DISSOLUTION TO ALL CREDITORS AND CLAIMANTS  
AGAINST FIELD STAFFING SERVICES, LLC**

Field Staffing Services, LLC, a Missouri limited liability company (the "Company"), filed its Notice of Winding Up for a Limited Liability Company with the Missouri Secretary of State, effective on February 17, 2017. Any and all claims against the Company may be sent to Spenserv, Inc., 1000 Walnut Street, Suite 1400, Kansas City, Missouri, 64106. Each claim should include the following information: the name, address and telephone number of the claimant; the amount claimed; the date on which the claim arose; the basis for the claim and documentation for the claim. Any and all claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three (3) years after the publication of this notice.

On February 7, 2017, 16 NEEDLES, LLC, a Missouri LLC (the "Company"), filed its Notice of Winding Up with the Missouri Secretary of State, effective on the filing date. Claims against the Company shall be mailed to Rebecca D. Senn, 12472 Charlotte St., Kansas City, MO 64146. Claims must include: the name, address and phone number of the claimant; the amount being claimed; the date on which the claim arose; the basis for the claim; and all documentation to support the claim. All claims against the Company will be barred unless a proceeding to enforce the claim is commenced within three years after the last publication of the notice.

**NOTICE OF WINDING UP TO ALL CREDITORS  
OF AND CLAIMANTS AGAINST  
THE BOYD LAW GROUP, L.C.**

On February 23, 2017, The Boyd Law Group, L.C., a Missouri limited liability company, Charter Number LC1035887, filed its Notice of Winding Up with the Missouri Secretary of State, effective as of the filing date.

All persons or organizations having claims against The Boyd Law Group, L.C. are required to present them immediately in writing to: Michael Boyd, P.O. Box 605, St. Peters, MO 63376.

Each claim must include: (1) claimant's name and current address; (2) the amount claimed; (3) the date the claim was incurred; and (4) a clear and concise statement of the facts supporting the claim.

**NOTE: CLAIMS AGAINST THE BOYD LAW GROUP, L.C. WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE THE CLAIM IS COMMENCED WITHIN THREE (3) YEARS AFTER THE PUBLICATION OF THIS NOTICE.**

# Rule Changes Since Update to Code of State Regulations

This cumulative table gives you the latest status of rules. It contains citations of rulemakings adopted or proposed after deadline for the monthly Update Service to the *Code of State Regulations*, citations are to volume and page number in the *Missouri Register*, except for material in this issue. The first number in the table cite refers to the volume number or the publication year—41 (2016) and 42 (2017). MoReg refers to *Missouri Register* and the numbers refer to a specific *Register* page, R indicates a rescission, W indicates a withdrawal, S indicates a statement of actual cost, T indicates an order terminating a rule, N.A. indicates not applicable, RAN indicates a rule action notice, RUC indicates a rule under consideration, and F indicates future effective date.

Rule Number	Agency	Emergency	Proposed	Order	In Addition
1 CSR 10	<b>OFFICE OF ADMINISTRATION</b>				
1 CSR 20-5.015	State Officials' Salary Compensation Schedule				41 MoReg 1477
1 CSR 20-5.020	Personnel Advisory Board and Division of Personnel		41 MoReg 1538		
1 CSR 20-5.020	Personnel Advisory Board and Division of Personnel		41 MoReg 1539		
	<b>DEPARTMENT OF AGRICULTURE</b>				
2 CSR 90-1.010	Weights, Measures and Consumer Protection		42 MoReg 5		
2 CSR 90-60.010	Weights, Measures and Consumer Protection		42 MoReg 6		
2 CSR 90-60.020	Weights, Measures and Consumer Protection		42 MoReg 7		
2 CSR 90-60.030	Weights, Measures and Consumer Protection		42 MoReg 7		
2 CSR 90-60.040	Weights, Measures and Consumer Protection		42 MoReg 9		
2 CSR 90-60.050	Weights, Measures and Consumer Protection		42 MoReg 9		
2 CSR 90-60.060	Weights, Measures and Consumer Protection		42 MoReg 9		
2 CSR 90-60.070	Weights, Measures and Consumer Protection		42 MoReg 10		
2 CSR 90-61.010	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-3.010)		42 MoReg 22		
2 CSR 90-61.020	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-3.020)		42 MoReg 23		
2 CSR 90-61.040	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-3.040)		42 MoReg 23		
2 CSR 90-61.050	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-3.050)		42 MoReg 24		
2 CSR 90-61.070	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-3.070)		42 MoReg 25		
2 CSR 90-61.080	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-3.080)		42 MoReg 25		
2 CSR 90-62.010	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-4.010)		42 MoReg 26		
2 CSR 90-62.020	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-4.020)		42 MoReg 26		
2 CSR 90-62.030	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-4.030)		42 MoReg 27		
2 CSR 90-62.040	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-4.040)		42 MoReg 27		
2 CSR 90-62.050	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-4.050)		42 MoReg 28		
2 CSR 90-62.060	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-4.060)		42 MoReg 29		
2 CSR 90-63.010	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-5.011)				42 MoReg 57
2 CSR 90-63.020	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-5.020)				42 MoReg 57
2 CSR 90-64.010	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-6.010)				42 MoReg 57
2 CSR 90-64.020	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-6.020)				42 MoReg 57
2 CSR 90-64.030	Weights, Measures and Consumer Protection (Changed from 10 CSR 30-6.030)				42 MoReg 57
2 CSR 90-65.010	Weights, Measures and Consumer Protection		42 MoReg 10		
2 CSR 90-65.020	Weights, Measures and Consumer Protection		42 MoReg 11		
2 CSR 90-65.030	Weights, Measures and Consumer Protection		42 MoReg 11		
2 CSR 90-65.040	Weights, Measures and Consumer Protection		42 MoReg 12		
2 CSR 90-65.050	Weights, Measures and Consumer Protection		42 MoReg 12		
2 CSR 90-65.060	Weights, Measures and Consumer Protection		42 MoReg 13		
2 CSR 90-65.070	Weights, Measures and Consumer Protection		42 MoReg 13		
2 CSR 90-65.080	Weights, Measures and Consumer Protection		42 MoReg 14		
	<b>DEPARTMENT OF CONSERVATION</b>				
3 CSR 10-4.137	Conservation Commission		42 MoReg 381		
3 CSR 10-4.140	Conservation Commission		42 MoReg 381		
3 CSR 10-4.200	Conservation Commission		42 MoReg 382		
3 CSR 10-5.220	Conservation Commission		42 MoReg 382		
3 CSR 10-6.415	Conservation Commission		42 MoReg 382		
3 CSR 10-7.455	Conservation Commission				42 MoReg 220
3 CSR 10-10.715	Conservation Commission		42 MoReg 383		
3 CSR 10-11.115	Conservation Commission		42 MoReg 384		
3 CSR 10-11.130	Conservation Commission		42 MoReg 384		
3 CSR 10-11.155	Conservation Commission		42 MoReg 384		
3 CSR 10-11.180	Conservation Commission		42 MoReg 385		
3 CSR 10-11.186	Conservation Commission		42 MoReg 386		
3 CSR 10-12.109	Conservation Commission		42 MoReg 387		
3 CSR 10-12.110	Conservation Commission		42 MoReg 387		
3 CSR 10-12.115	Conservation Commission		42 MoReg 387		
3 CSR 10-12.125	Conservation Commission		N.A.	42 MoReg 392	
3 CSR 10-12.130	Conservation Commission		42 MoReg 388		
3 CSR 10-12.135	Conservation Commission		42 MoReg 388		

Rule Number	Agency	Emergency	Proposed	Order	In Addition
3 CSR 10-12.140	Conservation Commission		N.A.	42 MoReg 393	
<b>DEPARTMENT OF ECONOMIC DEVELOPMENT</b>					
4 CSR 240-2.135	Public Service Commission		42 MoReg 14		
4 CSR 240-4.015	Public Service Commission		42 MoReg 17		
4 CSR 240-4.017	Public Service Commission		42 MoReg 18		
4 CSR 240-4.020	Public Service Commission		42 MoReg 18R		
			42 MoReg 19		
4 CSR 240-4.030	Public Service Commission		42 MoReg 19		
4 CSR 240-4.040	Public Service Commission		42 MoReg 20		
4 CSR 240-4.050	Public Service Commission		42 MoReg 20		
4 CSR 240-20.092	Public Service Commission		42 MoReg 160		
4 CSR 240-20.093	Public Service Commission		42 MoReg 162		
4 CSR 240-20.094	Public Service Commission		42 MoReg 168		
4 CSR 240-40.020	Public Service Commission		41 MoReg 1896		
4 CSR 240-40.030	Public Service Commission		41 MoReg 1898		
4 CSR 240-40.080	Public Service Commission		41 MoReg 1907		
4 CSR 265-2.020	Division of Motor Carrier and Railroad Safety		41 MoReg 1660R		
4 CSR 265-2.030	Division of Motor Carrier and Railroad Safety (Changed to 7 CSR 265-10.017)		41 MoReg 1660		
4 CSR 265-2.040	Division of Motor Carrier and Railroad Safety		41 MoReg 1661R		
4 CSR 265-2.050	Division of Motor Carrier and Railroad Safety (Changed to 7 CSR 265-10.051)		41 MoReg 1662		
4 CSR 265-2.055	Division of Motor Carrier and Railroad Safety (Changed to 7 CSR 265-10.052)		41 MoReg 1662		
4 CSR 265-2.057	Division of Motor Carrier and Railroad Safety		41 MoReg 1663R		
4 CSR 265-2.065	Division of Motor Carrier and Railroad Safety		41 MoReg 1663R		
4 CSR 265-2.067	Division of Motor Carrier and Railroad Safety		41 MoReg 1664R		
4 CSR 265-2.069	Division of Motor Carrier and Railroad Safety		41 MoReg 1664R		
4 CSR 265-2.160	Division of Motor Carrier and Railroad Safety		41 MoReg 1664R		
4 CSR 265-2.170	Division of Motor Carrier and Railroad Safety		41 MoReg 1665R		
4 CSR 265-2.200	Division of Motor Carrier and Railroad Safety		41 MoReg 1665R		
4 CSR 265-6.030	Division of Motor Carrier and Railroad Safety		41 MoReg 1665R		
4 CSR 265-14.010	Division of Motor Carrier and Railroad Safety		41 MoReg 1665R		
4 CSR 340-2	Division of Energy				41 MoReg 1440
4 CSR 340-4.010	Division of Energy	41 MoReg 1895	41 MoReg 1907		
4 CSR 340-6.010	Division of Energy		41 MoReg 1908		
<b>DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION</b>					
5 CSR 20-100.260	Division of Learning Services		42 MoReg 85		
5 CSR 20-100.280	Division of Learning Services		42 MoReg 85		
5 CSR 20-100.290	Division of Learning Services		42 MoReg 86		
5 CSR 20-400.380	Division of Learning Services		41 MoReg 1797		
5 CSR 20-400.385	Division of Learning Services		41 MoReg 1802		
5 CSR 20-400.640	Division of Learning Services		41 MoReg 1540	42 MoReg 393W	
5 CSR 30-261.025	Division of Financial and Administrative Services		41 MoReg 1909		
<b>DEPARTMENT OF HIGHER EDUCATION</b>					
6 CSR 10-3.010	Commissioner of Higher Education		42 MoReg 174		
6 CSR 10-11.010	Commissioner of Higher Education (Changed to 20 CSR 2200-7.010)		42 MoReg 21		
<b>DEPARTMENT OF TRANSPORTATION</b>					
7 CSR	Department of Transportation				41 MoReg 845
7 CSR 10-1.020	Missouri Highways and Transportation Commission		41 MoReg 1666		
7 CSR 10-2.030	Missouri Highways and Transportation Commission		41 MoReg 1666R		
7 CSR 10-10.010	Missouri Highways and Transportation Commission		42 MoReg 86		
7 CSR 10-10.020	Missouri Highways and Transportation Commission		42 MoReg 86		
7 CSR 10-10.030	Missouri Highways and Transportation Commission		42 MoReg 87		
7 CSR 10-10.040	Missouri Highways and Transportation Commission		42 MoReg 87		
7 CSR 10-10.050	Missouri Highways and Transportation Commission		42 MoReg 87		
7 CSR 10-10.070	Missouri Highways and Transportation Commission		42 MoReg 88		
7 CSR 10-15.010	Missouri Highways and Transportation Commission		42 MoReg 88		
7 CSR 10-18.010	Missouri Highways and Transportation Commission		42 MoReg 90		
7 CSR 10-18.020	Missouri Highways and Transportation Commission		42 MoReg 91		
7 CSR 10-18.030	Missouri Highways and Transportation Commission		42 MoReg 91		
7 CSR 10-18.040	Missouri Highways and Transportation Commission		42 MoReg 91		
7 CSR 10-18.070	Missouri Highways and Transportation Commission		42 MoReg 92		
7 CSR 10-18.090	Missouri Highways and Transportation Commission		42 MoReg 92		
7 CSR 10-19.010	Missouri Highways and Transportation Commission		42 MoReg 93R		
7 CSR 10-23.010	Missouri Highways and Transportation Commission		42 MoReg 93		
7 CSR 10-23.020	Missouri Highways and Transportation Commission		42 MoReg 94		
7 CSR 10-23.030	Missouri Highways and Transportation Commission		42 MoReg 94		
7 CSR 10-25.010	Missouri Highways and Transportation Commission		41 MoReg 1666		42 MoReg 318 42 MoReg 319 42 MoReg 319 42 MoReg 353 42 MoReg 400 42 MoReg 401
7 CSR 10-25.020	Missouri Highways and Transportation Commission		41 MoReg 1668		
7 CSR 10-25.030	Missouri Highways and Transportation Commission		41 MoReg 1680		
7 CSR 10-25.070	Missouri Highways and Transportation Commission		41 MoReg 1681		
7 CSR 10-25.072	Missouri Highways and Transportation Commission		41 MoReg 1682		
7 CSR 10-25.080	Missouri Highways and Transportation Commission		41 MoReg 1683		
7 CSR 10-26.010	Missouri Highways and Transportation Commission		42 MoReg 95		
7 CSR 10-26.020	Missouri Highways and Transportation Commission		42 MoReg 95		
7 CSR 60-1.010	Traffic and Highway Safety Division		41 MoReg 1684		
7 CSR 60-1.020	Traffic and Highway Safety Division		41 MoReg 1685		

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7 CSR 60-1.030	Traffic and Highway Safety Division		41 MoReg 1686		
7 CSR 60-1.050	Traffic and Highway Safety Division		41 MoReg 1687		
7 CSR 60-1.060	Traffic and Highway Safety Division		41 MoReg 1687		
7 CSR 60-2.010	Traffic and Highway Safety Division		41 MoReg 1688		
7 CSR 60-2.020	Traffic and Highway Safety Division		41 MoReg 1689		
7 CSR 60-2.030	Traffic and Highway Safety Division		41 MoReg 1690		
7 CSR 60-2.040	Traffic and Highway Safety Division		41 MoReg 1695		
7 CSR 60-2.050	Traffic and Highway Safety Division		41 MoReg 1699		
7 CSR 60-2.060	Traffic and Highway Safety Division		41 MoReg 1699		
7 CSR 60-3.010	Traffic and Highway Safety Division ( <i>Changed from 11 CSR 30-3.010</i> )		41 MoReg 1721		
7 CSR 265-10.015	Motor Carrier and Railroad Safety		41 MoReg 1700		
7 CSR 265-10.017	Motor Carrier and Railroad Safety ( <i>Changed from 4 CSR 265-2.030</i> )		41 MoReg 1660		
7 CSR 265-10.025	Motor Carrier and Railroad Safety		41 MoReg 1701		
7 CSR 265-10.051	Motor Carrier and Railroad Safety ( <i>Changed from 4 CSR 265-2.050</i> )		41 MoReg 1662		
7 CSR 265-10.052	Motor Carrier and Railroad Safety ( <i>Changed from 4 CSR 265-2.055</i> )		41 MoReg 1662		
7 CSR 265-10.055	Motor Carrier and Railroad Safety		41 MoReg 1701R		
7 CSR 265-10.090	Motor Carrier and Railroad Safety		41 MoReg 1702R		
7 CSR 265-10.140	Motor Carrier and Railroad Safety		41 MoReg 1702		
<b>DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS</b>					
8 CSR	Department of Labor and Industrial Relations				41 MoReg 845
<b>DEPARTMENT OF MENTAL HEALTH</b>					
9 CSR	Department of Mental Health				41 MoReg 845
9 CSR 10-31.016	Director, Department of Mental Health		41 MoReg 1909		
9 CSR 10-31.030	Director, Department of Mental Health		41 MoReg 1910		
9 CSR 45-3.080	Division of Developmental Disabilities		42 MoReg 177		
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10 CSR	Department of Natural Resources				41 MoReg 845
10 CSR 10-6.070	Air Conservation Commission		41 MoReg 1703		
10 CSR 10-6.075	Air Conservation Commission		41 MoReg 1709		
10 CSR 10-6.080	Air Conservation Commission		41 MoReg 1719		
10 CSR 10-6.250	Air Conservation Commission		40 MoReg 1023	41 MoReg 37	
10 CSR 20-8.500	Clean Water Commission		41 MoReg 1070	42 MoReg 349	
10 CSR 26-2.010	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1133	This Issue	
10 CSR 26-2.011	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1134	This Issue	
10 CSR 26-2.012	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1135	This Issue	
10 CSR 26-2.013	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1138	This Issue	
10 CSR 26-2.019	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1139	This Issue	
10 CSR 26-2.020	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1147	This Issue	
10 CSR 26-2.021	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1150	This Issue	
10 CSR 26-2.022	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1159	This Issue	
10 CSR 26-2.030	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1159	This Issue	
10 CSR 26-2.031	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1161	This Issue	
10 CSR 26-2.032	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1162	This Issue	
10 CSR 26-2.033	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1162	This Issue	
10 CSR 26-2.034	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1164	This Issue	
10 CSR 26-2.035	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1165	This Issue	
10 CSR 26-2.036	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1165	This Issue	
10 CSR 26-2.040	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1166	This Issue	
10 CSR 26-2.041	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1167	This Issue	
10 CSR 26-2.042	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1168	This Issue	
10 CSR 26-2.043	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1169	This Issue	
10 CSR 26-2.044	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1171	This Issue	
10 CSR 26-2.045	Petroleum and Hazardous Substance Storage Tanks ( <i>Changed to 10 CSR 26-2.048</i> )		41 MoReg 1172	This Issue	
10 CSR 26-2.046	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1172 41 MoReg 1308	This Issue	
10 CSR 26-2.047	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1173 41 MoReg 1309	This Issue	

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10 CSR 26-2.048	Petroleum and Hazardous Substance Storage Tanks ( <i>Changed from 10 CSR 26-2.045</i> )		41 MoReg 1172	This Issue	
10 CSR 26-2.050	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1174	This Issue	
10 CSR 26-2.052	Petroleum and Hazardous Substance Storage Tanks		41 MoReg 1174	This Issue	
10 CSR 30-3.010	Land Survey ( <i>Changed to 2 CSR 90-61.010</i> )		42 MoReg 22		
10 CSR 30-3.020	Land Survey ( <i>Changed to 2 CSR 90-61.020</i> )		42 MoReg 23		
10 CSR 30-3.030	Land Survey		42 MoReg 23R		
10 CSR 30-3.040	Land Survey ( <i>Changed to 2 CSR 90-61.040</i> )		42 MoReg 23		
10 CSR 30-3.050	Land Survey ( <i>Changed to 2 CSR 90-61.050</i> )		42 MoReg 24		
10 CSR 30-3.060	Land Survey		42 MoReg 24R		
10 CSR 30-3.070	Land Survey ( <i>Changed to 2 CSR 90-61.070</i> )		42 MoReg 25		
10 CSR 30-3.080	Land Survey ( <i>Changed to 2 CSR 90-61.080</i> )		42 MoReg 25		
10 CSR 30-4.010	Land Survey ( <i>Changed to 2 CSR 90-62.010</i> )		42 MoReg 26		
10 CSR 30-4.020	Land Survey ( <i>Changed to 2 CSR 90-62.020</i> )		42 MoReg 26		
10 CSR 30-4.030	Land Survey ( <i>Changed to 2 CSR 90-62.030</i> )		42 MoReg 27		
10 CSR 30-4.040	Land Survey ( <i>Changed to 2 CSR 90-62.040</i> )		42 MoReg 27		
10 CSR 30-4.050	Land Survey ( <i>Changed to 2 CSR 90-62.050</i> )		42 MoReg 28		
10 CSR 30-4.060	Land Survey ( <i>Changed to 2 CSR 90-62.060</i> )		42 MoReg 29		
10 CSR 30-4.070	Land Survey		42 MoReg 30R		
<b>DEPARTMENT OF PUBLIC SAFETY</b>					
11 CSR 30-3.010	Office of the Director ( <i>Changed to 7 CSR 60-3.010</i> )		41 MoReg 1721		
11 CSR 30-16.010	Office of the Director		42 MoReg 180		
11 CSR 30-16.020	Office of the Director		42 MoReg 182		
11 CSR 45-4.020	Missouri Gaming Commission		41 MoReg 1543		
11 CSR 45-5.053	Missouri Gaming Commission		41 MoReg 1543		
11 CSR 45-5.183	Missouri Gaming Commission		41 MoReg 1804		
11 CSR 45-5.184	Missouri Gaming Commission		41 MoReg 1804		
11 CSR 45-9.104	Missouri Gaming Commission		41 MoReg 1804		
11 CSR 45-9.120	Missouri Gaming Commission		41 MoReg 1544		
11 CSR 75-13.010	Peace Officer Standards and Training Program		This Issue		
11 CSR 75-13.060	Peace Officer Standards and Training Program		This Issue		
11 CSR 75-14.030	Peace Officer Standards and Training Program		This Issue		
11 CSR 75-15.010	Peace Officer Standards and Training Program		This Issue		
11 CSR 75-15.020	Peace Officer Standards and Training Program		This Issue		
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12 CSR 10-41.010	Director of Revenue	41 MoReg 1755	41 MoReg 1805	42 MoReg 351	
12 CSR 30-4.010	State Tax Commission		41 MoReg 160		
<b>DEPARTMENT OF SOCIAL SERVICES</b>					
13 CSR 30-1.010	Child Support Enforcement		41 MoReg 1544R	This IssueR	
13 CSR 30-2.020	Child Support Enforcement		41 MoReg 1544R	This IssueR	
13 CSR 35-32.010	Children's Division		42 MoReg 182R		
13 CSR 35-32.050	Children's Division		42 MoReg 183		
13 CSR 35-32.060	Children's Division		42 MoReg 185		
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13 CSR 35-32.080	Children's Division		42 MoReg 195		
13 CSR 35-32.090	Children's Division		42 MoReg 203		
13 CSR 35-32.100	Children's Division		42 MoReg 206		
13 CSR 35-32.110	Children's Division		42 MoReg 206		
13 CSR 35-32.120	Children's Division		42 MoReg 207		
13 CSR 35-32.130	Children's Division		42 MoReg 208		
13 CSR 40-1.010	Family Support Division		41 MoReg 1545	This Issue	
13 CSR 40-15.455	Family Support Division		41 MoReg 1546	42 MoReg 393	
13 CSR 40-19.010	Family Support Division		41 MoReg 1551R	42 MoReg 393R	
13 CSR 40-19.020	Family Support Division		41 MoReg 1551	42 MoReg 394	
13 CSR 40-19.030	Family Support Division		41 MoReg 1555R	42 MoReg 394R	
13 CSR 65-3.050	Missouri Medicaid Audit and Compliance Unit		41 MoReg 1556		
13 CSR 70-3.030	MO HealthNet Division		41 MoReg 1557	This Issue	
13 CSR 70-3.240	MO HealthNet Division		41 MoReg 1558		
13 CSR 70-4.090	MO HealthNet Division		41 MoReg 1468	42 MoReg 351	
13 CSR 70-10.016	MO HealthNet Division	41 MoReg 1054			
13 CSR 70-15.220	MO HealthNet Division		42 MoReg 209		
<b>ELECTED OFFICIALS</b>					
15 CSR 30-110.010	Secretary of State	42 MoReg 155 42 MoReg 255	42 MoReg 211		

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15 CSR 30-110.020	Secretary of State	42 MoReg 156 42 MoReg 256	42 MoReg 211		
15 CSR 40-1.010	State Auditor		42 MoReg 212		
<b>DEPARTMENT OF HEALTH AND SENIOR SERVICES</b>					
19 CSR 15-8.410	Division of Senior and Disability Services		40 MoReg 131		
19 CSR 30-1.002	Division of Regulation and Licensure		41 MoReg 1563	42 MoReg 394	
19 CSR 60-50	Missouri Health Facilities Review Committee				42 MoReg 320 42 MoReg 354 42 MoReg 401
<b>DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION</b>					
20 CSR	Applied Behavior Analysis Maximum Benefit				42 MoReg 321
20 CSR	Construction Claims Binding Arbitration Cap				41 MoReg 1925
20 CSR	Sovereign Immunity Limits				41 MoReg 1925
20 CSR	State Legal Expense Fund Cap				41 MoReg 1925
20 CSR 400-5.400	Life, Annuities and Health		41 MoReg 1579	42 MoReg 398	
20 CSR 2015-1.030	Acupuncturist Advisory Committee	42 MoReg 156			
20 CSR 2030-16.010	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 30		
20 CSR 2030-16.020	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 31R 42 MoReg 31		
20 CSR 2030-16.030	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 32R 42 MoReg 32		
20 CSR 2030-16.040	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 33R 42 MoReg 34		
20 CSR 2030-16.050	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 34R 42 MoReg 35		
20 CSR 2030-16.060	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 35R 42 MoReg 35		
20 CSR 2030-16.070	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 36R		
20 CSR 2030-16.080	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 36R		
20 CSR 2030-16.090	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 37R		
20 CSR 2030-16.100	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 37R		
20 CSR 2030-16.110	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 37R 42 MoReg 38		
20 CSR 2030-17.010	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 38		
20 CSR 2030-17.020	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 38		
20 CSR 2030-17.030	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 39R		
20 CSR 2030-17.040	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 39		
20 CSR 2030-17.050	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 40		
20 CSR 2030-17.060	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 40R		
20 CSR 2030-17.070	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 41		
20 CSR 2030-17.080	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 41		
20 CSR 2030-18.010	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 42		
20 CSR 2030-18.020	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 42		

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20 CSR 2030-18.030	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 43		
20 CSR 2030-18.040	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 43		
20 CSR 2030-18.050	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 44		
20 CSR 2030-18.060	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 45		
20 CSR 2030-18.070	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 46R		
20 CSR 2030-19.010	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		41 MoReg 1808	42 MoReg 352	
20 CSR 2030-19.020	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		42 MoReg 46		
20 CSR 2030-20.030	Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects		41 MoReg 1808	42 MoReg 352	
20 CSR 2070-2.090	State Board of Chiropractic Examiners	41 MoReg 1525			
20 CSR 2085-3.010	Board of Cosmetology and Barber Examiners		41 MoReg 1809	42 MoReg 352	
20 CSR 2095-1.020	Committee for Professional Counselors		41 MoReg 1722	42 MoReg 317	
20 CSR 2120-2.100	State Board of Embalmers and Funeral Directors	41 MoReg 373	41 MoReg 1911	This Issue	
20 CSR 2197-1.040	Board of Therapeutic Massage	41 MoReg 825			
20 CSR 2200-7.001	State Board of Nursing		42 MoReg 48		
20 CSR 2200-7.010	State Board of Nursing ( <i>Changed from 6 CSR 10-II.010</i> )		42 MoReg 21		
20 CSR 2230-2.070	State Board of Podiatric Medicine	40 MoReg 1875			
20 CSR 2270-1.021	Missouri Veterinary Medical Board		42 MoReg 95		
<b>MISSOURI CONSOLIDATED HEALTH CARE PLAN</b>					
22 CSR 10-2.010	Health Care Plan	41 MoReg 1755	41 MoReg 1816	This Issue	
22 CSR 10-2.020	Health Care Plan	41 MoReg 1758	41 MoReg 1818	This Issue	
22 CSR 10-2.025	Health Care Plan		41 MoReg 1819	This Issue	
22 CSR 10-2.030	Health Care Plan	41 MoReg 1759	41 MoReg 1820	This Issue	
22 CSR 10-2.051	Health Care Plan	41 MoReg 1760	41 MoReg 1820	This Issue	
22 CSR 10-2.052	Health Care Plan	41 MoReg 1760	41 MoReg 1821	This Issue	
22 CSR 10-2.053	Health Care Plan	41 MoReg 1761	41 MoReg 1821	This Issue	
22 CSR 10-2.055	Health Care Plan	41 MoReg 1763	41 MoReg 1823	This Issue	
22 CSR 10-2.060	Health Care Plan	41 MoReg 1772	41 MoReg 1831	This Issue	
22 CSR 10-2.089	Health Care Plan	41 MoReg 1773	41 MoReg 1833	This Issue	
22 CSR 10-2.090	Health Care Plan	41 MoReg 1774	41 MoReg 1834	This Issue	
22 CSR 10-2.110	Health Care Plan	41 MoReg 1776	41 MoReg 1836	This Issue	
22 CSR 10-2.150	Health Care Plan	41 MoReg 1777R	41 MoReg 1836R	This IssueR	
22 CSR 10-3.010	Health Care Plan	41 MoReg 1778	41 MoReg 1837	This Issue	
22 CSR 10-3.020	Health Care Plan	41 MoReg 1780	41 MoReg 1839	This Issue	
22 CSR 10-3.053	Health Care Plan	41 MoReg 1781	41 MoReg 1839	This Issue	
22 CSR 10-3.055	Health Care Plan	41 MoReg 1781	41 MoReg 1840	This Issue	
22 CSR 10-3.056	Health Care Plan	41 MoReg 1782	41 MoReg 1841	This Issue	
22 CSR 10-3.057	Health Care Plan	41 MoReg 1783	41 MoReg 1841	This Issue	
22 CSR 10-3.060	Health Care Plan	41 MoReg 1792	41 MoReg 1851	This Issue	
22 CSR 10-3.090	Health Care Plan	41 MoReg 1794	41 MoReg 1852	This Issue	
22 CSR 10-3.150	Health Care Plan	41 MoReg 1796R	41 MoReg 1854R	This IssueR	



# Emergency Rule Table

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<b>Department of Agriculture</b>			
<b>Animal Health</b>			
2 CSR 30-10.010	Inspection of Meat and Poultry . . . . .	Next Issue . . . . .	April 3, 2016 . . . . .Jan. 10, 2018
<b>Department of Economic Development</b>			
<b>Division of Energy</b>			
4 CSR 340-4.010	Wood Energy Credit . . . . .	41 MoReg 1895 . . . . .	Nov. 24, 2016 . . . . .May 22, 2017
<b>Department of Revenue</b>			
<b>Director of Revenue</b>			
12 CSR 10-41.010	Annual Adjusted Rate of Interest . . . . .	41 MoReg 1755 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
<b>Elected Officials</b>			
<b>Secretary of State</b>			
15 CSR 30-110.010	Electronic Notary Definitions . . . . .	42 MoReg 255 . . . . .	Dec. 31, 2016 . . . . .June 28, 2017
15 CSR 30-110.020	Electronic Signatures and Seals . . . . .	42 MoReg 256 . . . . .	Dec. 31, 2016 . . . . .June 28, 2017
<b>Department of Health and Senior Services</b>			
<b>Division of Regulation and Licensure</b>			
19 CSR 30-40.309	Application and Licensure Requirements Standards for the Licensure and Relicensure of Ground Ambulance Services	Next Issue . . . . .	March 26, 2017 . . . . .Jan. 3, 2018
<b>Department of Insurance, Financial Institutions and Professional Registration</b>			
<b>Acupuncturist Advisory Committee</b>			
20 CSR 2015-1.030	Fees . . . . .	42 MoReg 156 . . . . .	Jan. 13, 2017 . . . . .July 11, 2017
<b>Missouri Consolidated Health Care Plan</b>			
<b>Health Care Plan</b>			
22 CSR 10-2.010	Definitions . . . . .	41 MoReg 1755 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.020	General Membership Provisions . . . . .	41 MoReg 1758 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.030	Contributions . . . . .	41 MoReg 1759 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.051	PPO 300 Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1760 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.052	PPO 600 Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1760 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.053	Health Savings Account Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1761 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.055	Medical Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1763 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.060	PPO 300 Plan, PPO 600 Plan, and Health Savings Account Plan Limitations . . . . .	41 MoReg 1772 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.089	Pharmacy Employer Group Waiver Plan for Medicare Primary Members . . . . .	41 MoReg 1773 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.090	Pharmacy Benefit Summary . . . . .	41 MoReg 1774 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.110	General Foster Parent Membership Provisions . . . . .	41 MoReg 1776 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-2.150	Disease Management Services Provisions and Limitations (Res) . . . . .	41 MoReg 1777 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.010	Definitions . . . . .	41 MoReg 1778 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.020	General Membership Provisions . . . . .	41 MoReg 1780 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.053	PPO 1000 Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1781 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.055	Health Savings Account Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1781 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.056	PPO 600 Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1782 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.057	Medical Plan Benefit Provisions and Covered Charges . . . . .	41 MoReg 1783 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.060	PPO 600 Plan, PPO 1000 Plan, and Health Savings Account Plan Limitations . . . . .	41 MoReg 1792 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.090	Pharmacy Benefit Summary . . . . .	41 MoReg 1794 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017
22 CSR 10-3.150	Disease Management Services Provisions and Limitations (Res) . . . . .	41 MoReg 1796 . . . . .	Jan. 1, 2017 . . . . .June 29, 2017

**Executive  
Orders****Subject Matter****Filed Date****Publication****2017**

<b>17-09</b>	Establishes parental leave for state employees of the executive branch of Missouri state government and encourages other state officials to adopt comparable policies.	March 13, 2017	This Issue
<b>17-08</b>	Declares a State of Emergency and activates the Missouri State Emergency Operations Plan due to severe weather that began on March 6.	March 7, 2017	This Issue
<b>17-07</b>	Establishes the Governor's Committee for Simple, Fair, and Low Taxes to recommend proposed reforms to the governor by June 30, 2017.	January 25, 2017	42 MoReg 315
<b>17-06</b>	Orders that the Missouri State Emergency Operations Plan be activated. Further orders state agencies to provide assistance to the maximum extent practicable and directs the Adjutant General to call into service such portions of the organized militia as he deems necessary.	January 12, 2017	42 MoReg 267
<b>17-05</b>	Activates the Missouri State Emergency Operation Center due to severe weather expected to begin on Jan. 12, 2017.	January 11, 2017	42 MoReg 266
<b>17-04</b>	Establishes the position of Chief Operating Officer to report directly to the governor and serve as a member of the governor's executive team.	January 11, 2017	42 MoReg 264
<b>17-03</b>	Orders every state agency to immediately suspend all rulemaking until Feb. 28, 2017, and to complete a review of every regulation under its jurisdiction within the <i>Code of State Regulations</i> by May 31, 2018.	January 10, 2017	42 MoReg 261
<b>17-02</b>	Orders state employees of the executive branch of Missouri state government to follow a specified code of conduct regarding ethics during the Greitens administration.	January 9, 2017	42 MoReg 258
<b>17-01</b>	Rescinds Executive Orders 07-10, 88-26, 98-15, and 05-40 regarding the Governor's Advisory Council on Physical Fitness and Health and the Missouri State Park Advisory Board.	January 6, 2017	42 MoReg 257

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<b>16-10</b>	Reauthorizes the Governor's Committee to End Chronic Homelessness until December 31, 2020.	December 30, 2016	42 MoReg 159
<b>16-09</b>	Advises that state offices in Cole County will be closed on Monday January 9, 2017.	December 23, 2016	42 MoReg 158
<b>16-08</b>	Advises that state offices will be closed on Friday, November 25, 2016.	October 24, 2016	41 MoReg 1659
<b>16-07</b>	Declares that a State of Emergency exists in the State of Missouri and directs that the Missouri State Emergency Operations Plan be activated as a result of storms that began on May 25, 2016. This order shall terminate on June 26, 2016, unless extended.	May 27, 2016	41 MoReg 830
<b>16-06</b>	Declares that the next Missouri Poet Laureate will be named in June 2016 and directs that a Missouri Poet Laureate be named biennially to serve for two years at the pleasure of the governor. The order also includes qualifications and responsibilities for the post. Additionally the Missouri Poet Laureate Advisory Committee is hereby established.	May 27, 2016	41 MoReg 828
<b>16-05</b>	Directs the Department of Public Safety, with guidance from the Missouri Veteran's Commission and the Adjutant General of the State of Missouri, to coordinate events with the World War I Centennial Commission that recognize and remember efforts and sacrifices of all Americans during World War I.	May 27, 2016	41 MoReg 826
<b>16-04</b>	Orders all departments, agencies and boards, and commissions, in the Executive Branch subject to the authority of the governor to take all necessary action to amend initial employment applications by removing questions related to an individual's criminal history unless a criminal history would render an applicant ineligible for the position.	April 11, 2016	41 MoReg 658
<b>16-03</b>	Extends Executive Orders 15-10, 15-11, and 16-02 until February 22, 2016, due to severe weather that began on December 22, 2015.	Jan. 22, 2016	41 MoReg 299
<b>16-02</b>	Gives the director of the Department of Natural Resources the authority to temporarily suspend regulations in the aftermath of severe weather that began on December 22, 2015.	Jan. 6, 2016	41 MoReg 235
<b>16-01</b>	Designates members of the governor's staff to have supervisory authority over certain departments, divisions, and agencies.	Jan. 4, 2016	41 MoReg 153

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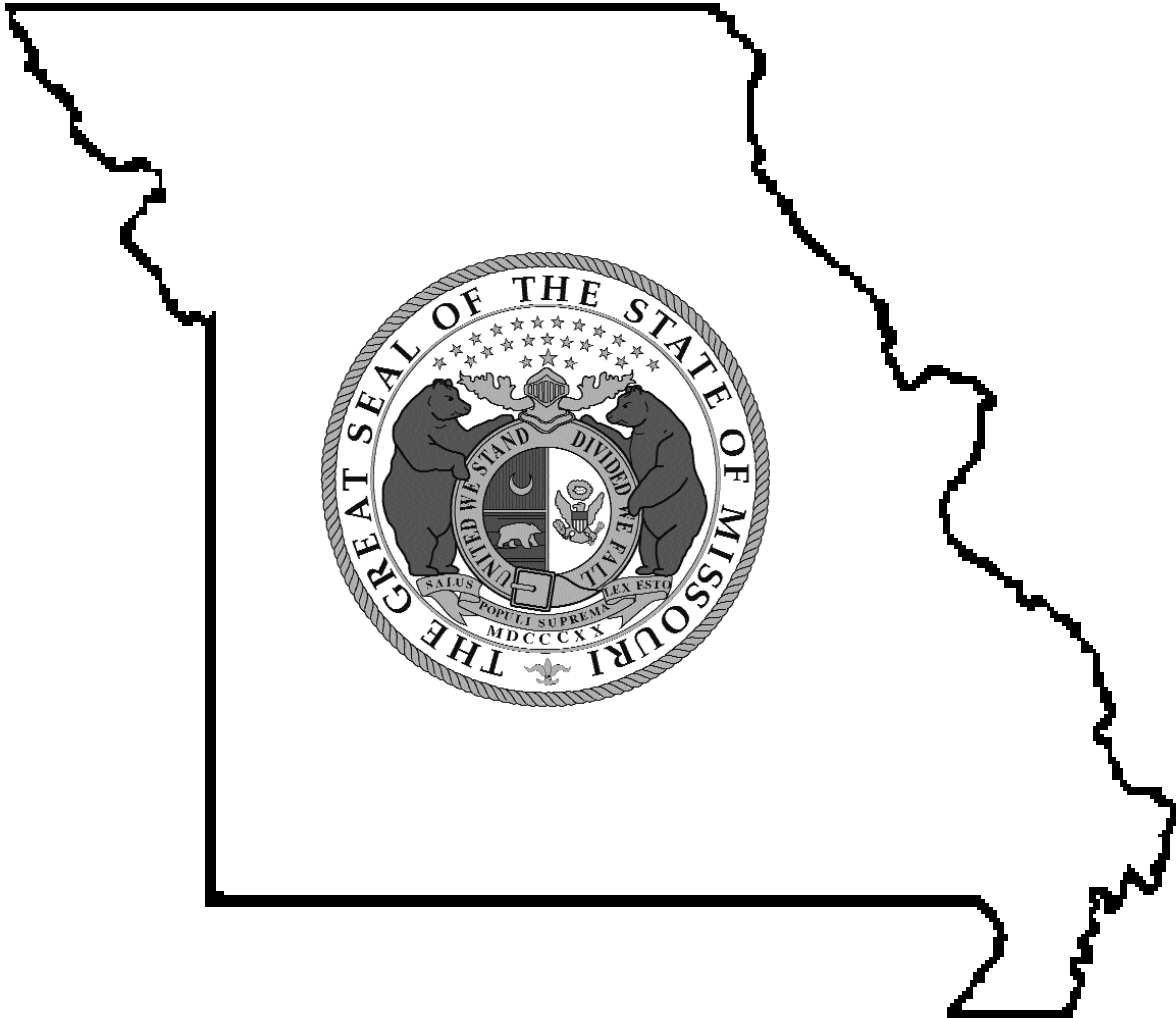
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